IN THE CIRCUIT COURT, FOURTH JUDICIAL CIRCUIT, IN AND FOR DUVAL COUNTY, FLORIDA
CASE NO.: 97-03522-CA
DIVISION: CV-H

ANGELA B. WIDDICK, as Personal Representative of the Estate of ROLAND E. MADDOX, deceased,
Plaintiff,
vs.
BROWN & WILLIAMSON TOBACCO CORPORATION, a foreign corporation; LIGGETT GROUP, INC., a foreign corporation; and WINN-DIXIE STORES, INC., a Florida corporation,
Defendants.

PROCEEDINGS held before The Honorable Charles O. Mitchell, Jr., at the Duval County Courthouse, 330 East Bay Street, Jacksonville, Florida, on Wednesday, May 13, 1998.

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P R O C E E D I N G S

May 13, 1998 8:00 a.m.

THE COURT: I tried to read all of Mr. Tucker's deposition, but it was a little ambitious, I think, for me to do. So where do you what to start? Do you want to start on the documents?

MR. JARMEL: Whatever is your pleasure, Judge.

THE COURT: Probably what I think we need to do, the most immediate thing is first so that we at least get through those because the documents are more important than, I think -- you're not talking about Tucker's deposition today, are you?

MS. HARTLEY: I don't think we'll get to that, Your Honor. I called Tom Riley last night and told him that the order that we intended to go in was with the deposition of Heimann, Sprinkle, and Lougee, which were the three depositions of former employees, and I didn't hear any -- I mean, I think we need to address whether they're going to have an objection to Heimann since that is a videotape.

The videotape that we have provided to them, the designations is exactly the same as was shown to the jury in Carter. We gave the

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designations to them at least a month ago, and we have not heard, so we assume, we're assuming it's okay, but I want to make sure this morning that we're set to go with that. It's an hour-long videotape.

MR. RILEY: Well, we faxed over some designations to you and objections last night.

MS. HARTLEY: Okay. I didn't get them yet. (Reviews document)

MR. RILEY: And Judge, rather than take up the Court's time perhaps Stephanie and I can talk about it when --

THE COURT: I just want to make sure --

MS. HARTLEY: The problem I have with changing it at this time, Your Honor, is that, as Your Honor well knows, we can't play the videotape unless we have it edited pursuant to Your Honor's orders. To get it edited in order for us to play it at 1:30, you know, is impossible. It seems to me that these objections are coming at a really late date, since they've had an opportunity for a long time to make objections.

We've been through the objections in the Carter case, and this is the one played. If it means that we're going to have to go back and edit,

we're going to have to find another witness.

THE COURT: That comes under the 95 percent. Do you want me to rule on the objections before you have read them or I have read them?

MS. HARTLEY: No, Your Honor.

THE COURT: Okay. Look at them and see if there is a problem.

MR. RILEY: There's not much, Judge.

THE COURT: And if you can't get it done, well maybe -- you know, how do you know I would sustain any of those objections?

MS. HARTLEY: Okay.

THE COURT: And you can argue that it is too late, but at least let's concentrate on what the objections are is what I am getting at. That's all I am saying, Ms. Hartley.

MS. HARTLEY: Do you have objections to Sprinkle and Lougee as well?

MR. RILEY: We have counter designations to Sprinkle and objections and the counter designations to Mr. Lougee.

THE COURT: Do you have Ed Fernandez working on it or something like that; I mean, because he can do it quickly.

MS. HARTLEY: Yes. We would have him do

it for us.

THE COURT: If it were edited, he could do it on short notice.

MS. HARTLEY: Well, Your Honor, I think

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this is the first thing that we need to take up. As far as the documents are concerned, I had talked to Tom last night. We gave them the books, and what we thought if they would tell us which ones in those books they have a specific objection to. We may pull some of them this morning so we don't have to have a big fight and seek to introduce those later.

So that I don't think we need to go through a long hearing on privilege issues at this time, because I think we can make agreements on quite a few of them.

MR. JARMEL: Judge, we have been going through the five binders just as background. You may recall one of those binders is public statements, and I don't think there is going to be any dispute about what is in those.

Two of the binders are American Tobacco Company documents related to quote "nicotine and Cancer." Two are Brown and Williamson binders that are nicotine and cancer. We'll probably -- well, we have gone through all of them and identified a

listing of 13 privileged documents; although, there are actually only 11. There are two sets of duplicates in there. So we have privileged objections for this 24-hour proffer on 11 privileged documents. We, obviously, will have to object and do objections to each of those privileged documents.

As to other objections, objections on relevance, hearsay, evidentiary matters, conspiracy matters, 59 of the documents, Judge, are conspiracy documents out of the 200 or so company documents that are listed.

We have someone right now going through those documents. He has been doing it for most of the night to identify, as Your Honor directed, which of the documents we really want to fight about. We will have maintained general objections, for example, to all of the Brown & Williamson documents or nonAmerican Tobacco Company documents. But we're not going to bring all of that to your attention on a document by document basis because I understood that is not what you wanted to hear.

We're going to pare it down to the absolute minimum and then provide Ms. Hartley this afternoon with the identification of those nonprivileged documents that we have trouble with,

and we can work that out.

Let me, if I could, can I take a moment to tell you what I have brought for Your Honor today?

THE COURT: Sure.

MR. JARMEL: I have given a set of the redacted versions without the documents to Mr. Hartley this morning by hand. And I have got, unfortunately, a terribly large volume box of materials for Your Honor. And before you throw me

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in jail and we see the volume of it, let me explain why I'm trying to be as efficient and convenient for the Court as possible.

What we have here, Judge, as you know last week we talked about whether or not we were actually going to be dealing with the full universe of privileged documents that were on the 1300 exhibit list. And I was told that we were. The number of documents that we have now identified as privileged are 95 documents. Rather than deal with this every day as we go through the trial on a 24-hour notice and constantly throwing paper, and it is easier on us, easier on plaintiff, easier on you, Judge, if for all those 95 documents we make a unified submission that is cross-indexed, tabbed, and we can just come in, Judge, and say, all right, today,

Judge, we're dealing with documents 6, 9 and 11. And you can quickly go and see what the document is.

What we have done is we have two parts of our submission. The first is the memorandum of law. We're making this -- you're receiving, Judge, an in-camera submission that contains all of the documents and a nonredacted set of briefings on those documents.

THE COURT: Okay.

MR. JARMEL: That's the briefing on the crime fraud law and why the crime fraud waiver and privilege status of these documents cannot be waived.

THE COURT: So that I will understand, I have been under the assumption that your objections fall into two categories; basically, broad like the Merrill Williams' documents. I assume you're going to raise that as a...

MR. JARMEL: Well, not all of them are privileged. We'll have another objection.

THE COURT: I'm talking about the 95 fall into...

MR. JARMEL: There are various -- they come from various sources. Some of them are mainly

-- are quote, "Merrill Williams' documents."

THE COURT: Are we going to have individual objections to each of the 95 documents, or are some of those included just in the general objection that they were obtained illegally and, therefore, shouldn't be used?

MR. JARMEL: No, all 95 documents, Judge, are privileged documents, regardless of how they were obtained, that we could not waive any privilege on. They were all attorney/client documents, and we briefed each document individually.

In addition to the memorandum, Judge, to support the assertions of fact that are in there, there are, I think, four volumes of exhibits that

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are right over here -- and I'll just leave them in the box, I assume -- that support all the statements in that memorandum of law.

THE COURT: I'll try to read it during your opening statements.

MR. JARMEL: Okay. I don't think the openings will be that long.

In addition to that, we have an appendix. The appendix is a document by document briefing of each document. And in the beginning of the appendix, Judge, is a list of all the documents

according to the tab with the reference numbers for how plaintiff has identified the documents. So if plaintiff says we're talking about B&W document 24, you can just go to the tab 14 and find the document.

THE COURT: All right. Thank you. That will help me.

MR. JARMEL: You have got the privilege log entry, Judge, to show that it is facially privileged. You've got a briefing on the document, and you've got the document itself.

THE COURT: All right. Thank you.

MR. JARMEL: And there are three volumes of that, Judge.

MS. HARTLEY: Well, Your Honor, I don't believe we need to have a separate hearing on all 95 documents. I'm not sure that is what you have suggested.

MR. JARMEL: Oh, no, no, no. This is for the whole purpose of the trial. You've offered 11 today.

MS. HARTLEY: That's fine. Right, and if you and I can take five minutes and identify those 11, we may be able to short-circuit the process.

THE COURT: Let me know when you're ready.

MR. JARMEL: That will be great.

THE COURT: I mean, you can stay here and do it if you want or -- I don't have a problem with that.

MS. HARTLEY: That would be good since all of the books are here.

THE COURT: Let me know when you need me. I'll be in here.

(Discussion off record and recess).

MS. HARTLEY: Just waiting on Tom Riley. We have worked out the documents, but we'll argue the designation of Heimann, the deposition of Heimann.

MR. JARMEL: So I understand, Judge, that they're withdrawing the 11 for today for any use so we don't have to talk about that?

MS. HARTLEY: We're not --

MR. JARMEL: Just for today.

MS. HARTLEY: Just for today.

THE COURT: Can I have the objections

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because I don't think I have got them.
MR. RILEY: Judge, I only brought one copy so -- but you can have that.
MR. MAXWELL: Does Your Honor have a copy of the transcript?
THE COURT: No.

MR. MAXWELL: Do you have an extra copy of the transcript?
MR. JARMEL: I thought we...
THE COURT: Let me see. Maybe I won't need it.
MS. HARTLEY: Well, the representations in the objections are not what it necessarily reads.
MR. MAXWELL: Your Honor, I'm not sure how much --
THE COURT: I need to know what page 70, line 3 is, okay.
MR. MAXWELL: I have it here. And perhaps if I can just stand behind Your Honor, we can go through it. And, Your Honor, I don't know how much of a background you have been given on this, but this very same deposition was offered in the Carter case. Judge Davis held a hearing on the parties' objections, consider the parties' objections; edited the transcript on the basis of those objections. And the videotape was shown to the jury with his rulings incorporated.
What we've designated for this trial was exactly what was played in Carter, so there is nothing new from our position. We have accepted the deletions that Judge Davis made in the transcipt

that we offered. We just seek to play the same videotape that was played in the Carter case.
MR. RILEY: Judge, and if I could explain, I think there is a line of questions in this deposition that deal with foreign warnings, which I think have been ruled inadmissible, and that's one of the reasons why we objected to a series of questions in this transcript.
I think Judge Weatherby granted an in-limine motion on that.
MR. MAXWELL: Tom, if you could direct his Honor to the specific -- do you have the specific passage? I mean, if that is all your're objecting to, you know, we can revolve that pretty quickly. I mean, is that your only objection?
Stephanie, do you have the objections?
MS. HARTLEY: To Heimann?
MR. MAXWELL: Yes, to Heimann. All right.
(Furnishes document to the Court)
MR. RILEY: I'll tell you what, Judge, we'll withdraw the objection on the lobbying of these --
THE COURT: I was going to say, he answered it anyway.

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25 MR. RILEY: We'll take it out. I'm not

1 going to object to that.
2 THE COURT: We'll go over to 101.
3 MR. MAXWELL: Let's go to page -- I think,
4 Your Honor, page 86 is the next one.
5 MR. RILEY: This is counter designation.
6 MR. MAXWELL: We don't have any objection.
7 Isn't that on the tape? Was that what you
8 designated the last time?
9 MR. RILEY: I think it's additional.
10 MR. MAXWELL: All right. Well, I guess we
11 should take up the objections first, and then we'll
12 look at the designations, but...
13 Look on page, I'm sorry, Your Honor, page
14 -- I guess it's page 97. Is that -- talk about the
15 foreign warnings, or do you want to go through each
16 one?
17 MR. RILEY: Well, let me look at 86.
18 MS. MAXWELL: All right. Page 86, line 18
19 through 25, and then continues to page 87, line 2
20 through 19. And, Your Honor, we offer that because
21 it is critical to our case. They are -- you know,
22 the defense's position is that Mr. Maddox was well
23 informed of the dangers and chose to smoke.
24 American's position throughout the time frame that
25 he was smoking was that cigarette smoking was not

1 injurious to health, and I think this demonstrates
2 the absurdity of their defense.
3 MR. RILEY: Judge, if I could just respond
4 very quickly. There is no proof that he ever relied
5 on any statement by American about smoking and
6 health, so what the company's position was is
7 irrelevant for the purposes of the lawsuit; that
8 they can't tie up, they can't connect Mr. Maddox's
9 smoking to the company's position. There is just no
10 proof on that.
11 MR. MAXWELL: It is an inconsistent
12 position that the company has taken, that publicly
13 the position is that cigarette smoking is not
14 injurious to health. To come in and say, well, he
15 should have known about the dangers is an
16 inconsistent position and we're entitled to
17 demonstrate what the position is.
18 THE COURT: I'll allow the objection,
19 Mr. Riley.
20 MR. MAXWELL: Now we go to page 95, line
21 5, continuing to page 96, line 7.
22 (The Court reviews the transcript)
23 MR. MAXWELL: All right. Our position,
24 Your Honor, with respect to this testimony is once
25 again it demonstrates American Tobacco Company's

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position with respect to whether their product is dangerous. This is not an attack on the warning. This is simply pointing out that they don't agree with the warning, they don't think a warning is necessary. The reason they don't think the warning is necessary is that they believe that cigarette smoking is not injurious to health.

Again, we're demonstrating what their stated position is to the world and to be able to come into court here and defend on the basis that, well, everybody knows that it is dangerous is an inconsistent position; that we're entitled to demonstrate to the jury that it is inconsistent.

MR. RILEY: Judge, it just doesn't matter whether American agrees with the warning or not or whether the company believes the warning should be given or not. It has been given and it has preempted the fact. So whether American thinks the warning should be given or not is irrelevant. The fact is the warning is there, and the warning has been deemed by congress to be adequate.

THE COURT: Well, I guess you're not going to present any testimony about anything your company has done to warn people other than put this on?

MR. RILEY: There will be no proof, I

don't believe, Your Honor, that the company has done anything to warn. But I do believe that the proof will show the consumers are well aware of the risks from a variety of sources. But the way the company has been warned has been the way that congress told them to.

THE COURT: Well, I guess, you know, always with objections before I hear the rest of it, I -- isn't part of their claim that you knew and didn't warn?

MS. HARTLEY: Yes, Your Honor.

MR. RILEY: That certainly is their claim, Judge.

THE COURT: And doesn't this go to that? If he says we disagreed with the warning placed on the cigarettes by congress, we certainly did disagree with it. We thought there was no reason to put it there. I mean, isn't that relevant testimony by...

MR. RILEY: Well, prior to 1966 there certainly was no warning and we agree with that. There is no question about that.

THE COURT: And isn't that part of their case?

MR. RILEY: That is certainly part of

their case. I mean, this testimony goes to the period after that when there was a warning, so whether the company thought there should or shouldn't be a warning after that is...

THE COURT: It also goes to why you didn't

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warn before because you didn't think it was necessary. You didn't even think it was necessary to put this warning on there, but you did it because congress requires it.

I'll allow that part of it. And do you want to talk about the overseas one? I think I'll allow all of it because I think it goes to, you know, what knowledge you had and what you did with it.

MR. MAXWELL: Thank you, Your Honor. Now, I think that takes care of that.

THE COURT: But again, it is hard for me -- I don't know what he says in the rest of the deposition, but I mean -- or what the evidence is going to be to tie this in. Go ahead.

MR. MAXWELL: The designations that they have made, I don't think that is going to be a problem. I apologize, Your Honor, for not being prepared to argue these specifically. We did not get that until last night.

THE COURT: Well, I have read --

MR. MAXWELL: You know, as we stand here, I don't have an objection to this. I don't know if it's in the tape. If it's not in the tape --

MR. RILEY: It's not in the tape.

MR. MAXWELL: Well, you can read it. I have no objection to you reading it if you want to.

THE COURT: Well, it appears to me that the designation on page 70, lines 3 through 6 are of little or no significance because the objection to the form of the question, it was reasked, and it was answered, so I don't have a problem with taking it out.

MR. MAXWELL: No. He wants to put it in, and I have no objection.

THE COURT: Well, you can put it in.

MR. MAXWELL: But I don't know if it is on the tape. I think it is.

MR. RILEY: If it's on the tape, that's fine. If it's not --

MR. MAXWELL: You can read it if it is not.

THE COURT: What I'm saying is, I have no problem with it one way or the other, whatever is convenient.

MR. RILEY: If it's not on the tape, you'll just play it and we won't read it.

MR. MAXWELL: That is fine.

THE COURT: Page 101.

MS. MAXWELL: Starts on page 101. And again, I have no objection. I think it is in the tape. If it is not, you know, I have no objection to you reading it.

THE COURT: Okay. Is that it?

MR. MAXWELL: That takes care of Heimann.

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MS. HARTLEY: On Sprinkle and --
THE COURT: All right. I don't have a problem with getting stuff done, but I want to start at 9:00. Then we can recess and meet again at lunch-time.
MR. MAXWELL: The others are not a videotape and maybe we can do that by agreement. If we can't, we'll try to narrow it down.
MS. HARTLEY: We can do -- if we can agree, and if not, we'll --
THE COURT: Well, again, this process works real well. It has in previous cases, not just tobacco cases, and it's -- again, I will give either side an opportunity to put whatever you want on the record at any time.

So I don't know if you want to use this procedure, but in the asbestos cases in the past I have spent, and the other judges too, spent about an hour or two going through all the exhibits, and there is an agreement, which some attorneys may not be able to go along with, but they agree on various documents that we're not agreeing that this is admissible, but we are agreeing that you would overrule our objection to it, because we have ruled on them so often. I mean, you know, we have had 25 asbestos cases or probably or more here, and I've had about six of them, and they know that with all of the documents that never get to trial unless we had -- well, I had the first pretrial on the first asbestos case, and we spent 48 hours on documents.
MR. MAXWELL: Charles Mansville, things like that?
THE COURT: Yes. We did it in the courtroom.
MR. RILEY: Judge, I hope that's not an indication of what you think of our objections.
THE COURT: No, it's not and what I'm saying is I realize that many of your objections are for the record and for appellate purposes, and I don't expect you to give up those objections. But

all I'm saying is that I don't necessarily think we need to take two or three hours arguing before me something that you know I'm going to allow in, and you can save that argument for the appellate Court and preserve it, and I don't have a problem with it.
MR. RILEY: Judge, we're going to try and be very realistic and specific with our objections.
THE COURT: That's all I'm saying, Mr. Riley. And I don't expect you to give up anything.
MR. RILEY: I understand, and we're going to do our very best.
THE COURT: But it's like I said the other day, if you argue everything to the nth degree, then I'm not even sure what is important to you and what

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isn't, you know.
All right, if you all are ready to start then at 9:00 I'll be there. And I assume -- I need to know before I go in there if Mr. Nyhan has any problem or wants to add anything, because we need to talk about it beforehand.
MR. RILEY: I'll find out right now, Judge.
(Change of reporter, 8:55 a.m.)

THE COURT: Obviously, we have, as you noted, the television cameras and other cameras in the courtroom. I am assuming that any of the media who wish to film any of the proceedings will abide by the rules of not showing the jurors' faces and, also, that any audio which is in the courtroom will not be turned on or not at the side bar. Is that your understanding, Mr. Wilner?
MR. WILNER: That is my understanding.
THE COURT: Mr. Nyhan, is that your understanding?
MR. NYHAN: Your Honor, I didn't really have any understanding until a moment ago, and I asked the producer over here. And I gather the mics at counsel table -- I don't know what the situation is there, whether they're live all the time and they'll pick up conferences among counsel and I.
MR. WILNER: Your Honor, they probably shouldn't be live at all, since anything we're going to say, we're going to get up and -- stand up and talk to the Court that we want public.
THE COURT: I don't know of any reason --
MR. NYHAN: Okay. So we can just take these out?
THE COURT: Wait, wait -- okay. You can

have them come get them. Okay. All right. If they want to place them someplace else, that may be fine, but...
Are you ready to proceed, Mr. Wilner?
MR. WILNER: Yes, Your Honor.
THE COURT: Mr. Nyhan?
MR. NYHAN: Yes, Your Honor, we are.
THE COURT: All right. Bring them in, please.
(Jury enters courtroom)
THE COURT: When you come in, just have a seat each time and I'm going to ask that the three of you seated on the far end, that you come and sit in these seats on the front row next to Mr. Burk, please. And if you'll just sit in that order each time you come back in, please.
MR. NYHAN: Your Honor, may I have permission to move around if any of the apparatus obstructs the view?
THE COURT: Certainly.

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MR. NYHAN: Thank you, Your Honor.
THE COURT: Ladies and gentlemen, you have now been sworn as the jury to try this case. This is a civil case involving a disputed claim or claims between the parties. Those claims and other matters

will be explained to you later.
By your verdict, you will decide the disputed issue of fact. I will decide the questions of law that arise during the trial. And before you retire to deliberate at the close of the trial, I will instruct you on the law that you are to follow and apply in reaching your verdict. In other words, it is your responsibility to determine the facts and to apply the law to those facts.
Thus the function of the jury and the function of the judge are well defined and they do not overlap. This is one of the fundamental principles of our system of justice.
Now before proceeding further, it will be helpful to you to understand how a trial is conducted. In a few moments, the attorneys for the parties will have an opportunity to make opening statements in which they may explain to you the issues in the case and summarize the facts that they expect the evidence will show.
Following the opening statements, witnesses will be called to testify under oath. They will be examined and cross-examined by the attorneys. Documents and other exhibits also may be received as evidence.

After all the evidence has been received, the attorneys will have an opportunity to address you and to make their final arguments. The statements that the attorneys now make and the arguments that they later make are not to be considered by you either as evidence in the case or as your instructions on the law.
Nevertheless, these statements and arguments are intended to help you properly understand the issues, the evidence and the applicable law. So you should give them your close attention. Following the final arguments by the attorneys, I will instruct you on the law.
During the trial, you should give careful attention to the testimony and other evidence as it is presented for your consideration, but you should not form or express any opinion about the case until you have received all of the evidence, the arguments of the attorneys and the instructions on the law from me.
In other words, you should not form or express any opinion about the case until you are retired to the jury room to consider your verdict after having heard all of these matters. Now the case must be tried or heard by you only on the

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evidence presented during the trial in your presence and in the presence of the attorneys and myself.

Accordingly -- let's see, you must avoid reading newspaper headlines and articles relating to this case and trial. You must also avoid seeing or hearing television and radio comments or documents of this trial while it is in progress. And this is probably a good place for me to explain to you, we do have cameras in the courtroom. They will be taking -- actually they will be filming the entire trial.

The one rule that we require, as far as the jury is concerned, they will not show the jurors' faces. If you are shown at all, it will be -- your face will not be shown. There is an order by me to that effect, and we don't have any problem with the media following those kinds of orders. They are very cooperative in that area.

Now the attorneys are trained in the rules of evidence and trial procedure, and it is their duty to make all objections they feel are proper. When a lawyer makes an objection, I will either overrule or sustain the objection.

If I overrule an objection to a question, the witness will answer the question. When I

sustain or uphold an objection, the witness cannot answer the question. If I sustain an objection, you must not speculate on what might have happened or what the witness might have said had I permitted the witness to answer, and you should not draw any inference from the question itself.

Now during the trial, it may be necessary for me to confer with the attorneys out of your hearing, talking about matters of law and other matters that require consideration by me alone. It is impossible for me to predict when such a conference may be required or how long it will last.

When such conferences occur, they will be conducted so as to consume as little of your time as necessary for a fair and orderly trial of the case. You have already seen an example of that. We were conferring with the attorneys at the side bar, which is what we call the furthest part of the bench from you. And when we are -- all during the trial, we'll have side bar conferences. And please, do not try to hear what we're saying.

We will try to conduct our business at the side bar quickly. If we can't, I'll ask that you step back in the jury room where you can relax a little more if it's going to take us more than two

or three minutes or five minutes. But please, do

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not try to overhear. When I have side-bar conferences, that is my portion of the trial and not your portion of it.

Now, during the trial, as I told you yesterday, we will take recesses. And during these recesses, you shall not discuss the case among yourselves or with anyone else nor permit anyone to say anything to you or in your presence about the case.

Further you must not talk with the attorneys, the witnesses or any of the parties about anything until your deliberations are finished. And this way, any appearance of something improper could be avoided. In fact, all of the people seated at the counsel table are under orders not to even say "hello" to you in the halls during the case, because we want to avoid even the appearance of anything improper. And I can assure you, none of them will try to talk to you during the case.

If anyone tries to say something to you or in your presence about the case, tell that person that you're on the jury trying the case and ask that person to stop. If he or she keeps on, leave at once and immediately report this to the bailiff or

court deputy who will advise me.

Mr. Backer, who was been directing you in and out of the jury box, is the bailiff of the courtroom -- for this courtroom for this case and he -- the bailiff is nothing more and nothing less in Duval County than a deputy sheriff. He works for Sheriff Glover and is assigned to this courtroom.

The primary job of the bailiff in any courtroom is to keep order in the courtroom. We do not have any problems with keeping order in the courtroom during civil cases -- or usually we do not have any problems. So as far as the jury is concerned, his primary job is to act as a liaison between you and I.

If you have any problems that you think I need to know about or any questions, if you'll pass those along through Mr. Backer, he will -- this is Sidney Backer. Mr. Backer is a deputy sheriff, like I said. He will pass that information along to me. I will either supply what you need; tell you I can't supply what you need, whether that's answers or something else. At least you will get an answer if I can't do what you want, if that's the case.

The gentleman seated right in front of me, Mr. Bob Langley, is an assistant clerk of the

circuit court. He works for the elected clerk Henry Cook. He is in charge of all of the evidence presented -- the physical evidence presented in the case and the file and has various other duties which do not need to concern you.

I would introduce the ladies, but there

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are going to be five or six of them, court reporters. We're only making one record. We're making a record of the entire trial from the time I walked in to start jury selection process until the time you have reached a decision and come back and I have recessed the trial. They are doing it in shifts so that they can cover everything, and they'll be walking in and out. You're to pay no attention to them, but the bottom line is, there will be one record of the trial, and these ladies will jointly do that.

As I said -- Counsel, approach the side bar just a minute.

(Side bar, Court and counsel)

THE COURT: Which brings me to a point, you've just seen me talk to the attorneys without a record being made. Any time I do that during the entire trial, we will be discussing one of two things only; that is, when to take a recess and when

is the next witness scheduled.

So if you see me talking to the attorneys about anything during this case that does not go on the record, that's the only thing that I'll be talking about.

Now, Mr. Langley, do you have enough notepads for the jury to -- pass out to the jury?

MR. LANGLEY: No, sir, but I will get them.

THE COURT: Can you get them, and I'll ask that you step back in the jury room just for a few minutes, and we'll get you notepads and pencils for you to take notes if you chose. Please step back in the jury room.

(Jury exits courtroom; discussion off record and recess)

(Change of reporters, 9:20 a.m.)

THE COURT: Are you ready to proceed, Mr. Wilner?

MR. WILNER: Yes, Your Honor.

THE COURT: Mr. Nyhan?

MR. NYHAN: Yes, Your Honor.

(Jury enters courtroom)

THE COURT: Ladies and gentlemen, as I said earlier, we're about to have opening statements in which the attorneys will explain to you what they think the evidence will show. And while this is not to be considered as evidence in the case nor is your

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instructions on the law, it is a very important part of the trial, just as closing arguments are.

And you should give them your close attention. Mr. Wilner, are you ready to proceed?

MR. WILNER: If it would please the Court.

THE COURT: All right.

MR. WILNER: Good morning, I'm Woody Wilner. You saw me a little bit yesterday or day before. I apologize that I had to come in and out of the courtroom. We're going to be doing that some during the trial. We didn't go out to the French Riviera or anything. We were doing some work that needed to be done on the case that required my

presence out of the courtroom. But for now on, for the next few days we're going to be with you and you're going to be with us.

First, I need to say thanks for being here because it's an important thing to do. It's a great thing to do. We all mean that. I'm sure both -- all attorneys here and all the parties here mean that. It's a real, it's a real great opportunity to be part of the government.

A lot of people complain about government, complain they don't get a fair shake, you know, we don't like government. But this is part of government, too, and this is part of civilization, you know. It's really a wonderful thing we get to do this. You know, not all countries have this privilege.

Some of them -- we've fought hard for this privilege. People have really sacrificed a lot to have this, the ability to do this. It takes sacrifice still. And it takes your sacrifice because you've got families, you've got jobs, you've got other things to do other than be here. We know this.

We don't do this to you -- all attorneys here will move this proceeding along just as fast as

we can to get a fair result so you fairly hear the case. I'm not here to waste your time. We want to move it along.

Sometimes you'll be back in the jury box -- jury room thinking, What are they doing, I've been sitting here for hours, don't they care about us? We do care about you. We're going to move it along as quickly as we can. Sometimes we have to have conferences out here and have discussions and so forth, but we do care.

So we thank you from the bottom of our hearts that you will put up with us for the next few weeks, or as fast as we can, and that you'll be interested in listening and that when it's over, when you've heard the evidence, you'll take that evidence and you'll treat it with your brain, with

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your heart, you know. And you'll be the best kind of people there are, which are the thinking, feeling people we have in this country and that you'll deliver a fair verdict, whatever it is. If you do that, that's what -- that's all we can ask.

So enough said about that. We appreciate it. I'm Norwood Wilner. My partner, Floyd Matthews, you saw him, probably too much of him already. Stephanie Hartley, she is back there. She

will be helping us, also. As I said, we may not all be here at one time, but it's not because we're goofing off.

Angela Widdick is the personal representative of the estate of Roland Maddox, who is deceased. He's been killed by the cigarettes that he smoked, Lucky Strike. So he can't be here. But Angie is taking care of the estate, bringing the case.

Margaret Maddox, please stand up. I know you're kind of behind the screen here. Margaret Maddox is the widow of Roland Maddox, if she can peep out here. And she's going to be -- she's the force behind this. She is going to be up here. You're going to hear all about Mr. Maddox from her. You're going to hear about the life and death of a great man. And if she -- I told her if she looks -- if she's uncomfortable or needs to get up, she can. So have a seat.

So what is -- what are we doing here? What is this case about, Mr. Wilner? If someone -- you know, I'll make believe somebody asked me. You can't ask me, but I'll make believe you can. You're going to say, Look, what are we talking about? You know, we're not -- cigarettes are a product that has

been all over the country for years.

You know, you might have heard some cases, other cases. Don't worry about them. You're not here on other cases. You're here on this one. But in general you're wondering what is -- what is going on, what kind of case is this? Why is Mr. Maddox, Mrs. Maddox, why are they bringing this case?

So in the next few minutes, I have an opportunity to kind of explain why the -- the wheres, the whys and the hows, you know, what is going to happen.

Now, the funny thing about a lawsuit is that the lawyers don't get up and talk to you the whole time. Sometimes they do on television. You know, like every witness comes and then the lawyer says, Well, you see, you know, see what he said? We've got him now. Well, we don't do that really.

In real life, the only time the lawyers talk directly to you is at the beginning and the very end of the case. All the rest of the case is this question-and-answer format between the witness

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and the lawyer. And then the other lawyer gets up and asks some other questions. We go on and on until the judge decides we've had enough, or we do.

So there's a lot of things, though, that

go on in this that are kind of formal, you know. There's rules of evidence. There's some ways of phrasing questions that may seem -- you don't know why we're asking. It's not that we do that deliberately. We would like to do that, get up and say, Here is what this is all about. We can't do that. So we only get the chance to do that in the beginning and the end.

This is the beginning, so I'm going to try to do a little of that. But we're going to be here -- there will be, I don't know, maybe five, six, seven witnesses. It would be hard to go through every one of them, you wouldn't remember any of them.

So I'm going to try to piece together what it is you're going to be asked to do, because that's a real good question. You're going to sit here and then what? You're just going to be like that (indicates), thumbs up or thumbs down or is it going to be some kind of question? Okay. Let's see if I can answer that first, because that's a good place to start maybe is at the end.

So this is a lawsuit and it's called Widdick -- and this is a lousy marker, so I'll start with another one. Which is the -- which is --

Ms. Widdick is the personal representative of Roland Maddox versus Brown & Williamson Tobacco Company.

Now, from the start you'll hear that there are some other tobacco companies that kind of come in and go in here. And sometimes it gets confusing. Brown & Williamson Tobacco Company bought out the American Tobacco Company in, I think it was '94 or '95. I forgot.

So anyway, they took over and merged with American and anything that the old American Tobacco Company did the Brown & Williamson Company is now responsible for. And that's why they're here, because there isn't any more American. They bought them out. They don't contest it.

So American Tobacco made the Lucky Strike cigarettes, Lucky Strike. And when -- which Roland Maddox smoked from and bought from 1950 or thereabouts up until 1996, when he was diagnosed with lung cancer and he died in 1997, pretty bad. So Lucky Strike cigarettes were made by American Tobacco for years. And then Brown & Williamson bought them in -- I forgot. We'll find out if it's '94 or '95, I just can't remember.

But Roland Maddox continued to smoke them when they were made by Brown & Williamson. So

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really we're here talking about both Brown & Williamson and American, because they both made Lucky Strike and because Brown & Williamson took over American anyway. But some of the papers that we have -- see, we've been able to get, through various means, documents, which are like old letters and memoranda and things, from the old days, from the '50s sometimes, sometimes even the '40s, and the '60 and '70s. We call them documents, but they're really letters or sometimes they're publications. Sometimes they're memoranda, sometimes they're ads.

Anyway, we are able to admit these into evidence if certain requirements are met and His Honor rules we can put them in. And when they come in, you'll get to see them and then they speak for themselves, in a way.

I mean, those people who were living in the '50s, '60s, '70s, some of them are dead. But what they say is just like somebody here. I mean, they didn't know about this lawsuit. They might have known this was going to come sometime, but they wouldn't know who it would be.

So those documents are, we suggest, are important for your consideration because they're there and they can't be changed. You know, they're

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on the record with these things.

Anyway, we have documents from both the American Tobacco Company and the Brown & Williamson Company, because they're really both on the hook. The reason I go into this is because it gets confusing. Some say Brown & Williamson, some say American. We'll do our best to qualify.

So all these -- Brown & Williamson and American are responsible for the Lucky Strike brand of cigarettes. Roland Maddox, actually he started smoking Chesterfield cigarettes, which was a Liggett product in 19-, we think around -46 or -48, or something like that. Then in '50, he smoked Lucky Strikes.

And Lucky Strikes were the principal brand that he smoked for his lifetime. That's why we're here. And I don't swear to you -- I can't swear to you at all. I use that as an expression. Lawyers don't express any opinion about the evidence. We are not allowed to. So when I say I swear to you, that's a figure of speech.

Did Roland Maddox smoke any other product? I don't know, maybe. But Lucky Strike was the predominant product in his life and, and the cause of his death or the primary cause. So that's

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why we have got Brown & Williamson, because we've got 45 years of use, "use" I say, because he used

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them just exactly the way Brown & Williamson and American -- when I say Brown & Williamson, I also mean American in previous years -- expected and knew that he would.

I mean, no surprise that Roland Maddox used their product, which they offered on the market. They said smoke them, you know, and he did just like they asked. But anyway that's the reason that Brown & Williamson is here.

Okay. So what are you going to be asked at the end, that's what I got up to tell you, all right. Basically, it's our -- it's our job to come into court and charge them. We're not -- this isn't a criminal case. And so sometimes people get confused, Well, you know, is it the same? Are we talking about something legal or something illegal?

This is a civil case. It's either -- there are two different branches really, of the law. One is the criminal law and one is the civil law. You can be guilty of a civil law violation without breaking the criminal law.

Like if you -- to use the example of a manufacturer. If you manufacture a toaster, it

could be perfectly legal to make the toaster, but if the wiring in there is shorted and it burns down somebody's house, they could come into civil court and say, you know, that product wasn't any good. It burned down my house. And you can come in and say, Well, I was allowed to make it. Okay, you were.

But to illustrate, that would be a good defense if they were in criminal court, but not if they're brought into the civil court because they're two different socks.

So we're here on the civil side, which means a citizen of this great country is entitled to bring an action for damages if they can prove -- and we have to prove it, and we will prove it -- that they've been wronged, that they've been hurt by something the other side did that was wrong; not necessarily illegal, but wrong. And that really is a different thing.

And as I say, it's not the same in all countries. We've got a powerful civil law system here. It protects consumers. And Florida has a powerful civil law organ -- not organization, a powerful civil law system that protects consumers. So this gives us the entitlement to do this kind of thing.

So what do we claim? Well, one, you'll be asked at the end -- at the end of the case, you'll get something called a verdict form and it will have a bunch of questions on it. And you'll be asked to go into the -- into the jury room, elect a foreperson and then sit there and answer these questions. And then you can talk about the case,

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and you've got to all agree on what the answers to the questions are.

Now, we don't know exactly what it's going to be, because His Honor, Judge Mitchell, rules at the end of the case. But before you see the document, he rules exactly what these questions should be. They -- to some extent, they may be affected by what goes on here, so I can't tell you exactly what they're going to be.

But basically it's going to be something like, was there negligence, negligence on behalf of Brown & Williamson, American, whatever, which was the legal cause of Mr. Maddox's death, a legal cause, a legal cause.

The second is going to be something like was the product -- was Lucky Strike defective, which really means was it unreasonably dangerous, which really means, according to our theory, did they use

the best technology to make the product as safe as they could.

Now, just so everyone understands, we don't claim that there is a way to make it completely safe. We don't make that claim. We charge them with not using the available technology to make it at least as safe as reasonably possible, just reasonably possible, not absolutely black and white. But that's the civil law. See, it gets -- you get to test what is reasonable.

What does the word negligence mean in the first -- in the first question that you'll be asked? Because it will say something about negligence. Negligence is the failure to use reasonable care. Is there a rule book that says what reasonable care is? There isn't.

Reasonable care is what you civilized people think reasonable care means when you go into the jury box and you decide. Reasonable care is what is reasonable when you hear all the evidence. And if you're not completely satisfied with that, maybe at the end of the trial it will make more sense.

But there isn't a rule book that says exactly in every circumstance how somebody is

supposed to behave, because behavior changes with the facts. No two facts are the same. So what the law says, what the civil law says, is reasonable care. Okay.

The second one says was there a defect, which means -- it doesn't mean it came out of the box with a hole in it. It means, did they use the available technology to make it reasonably as safe as they could. And we're going to prove to you they didn't. And that was a problem.

And number three is, did they conspire with others in the industry to prevent scientific

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knowledge from -- from coming out into the community, like it should have. Did they conspire to prevent safer products from being on the market the way it should have. Did they conspire to prevent the publication of important material that would have made a difference to the scientific community and to consumeers. Did they get together and did they agree on doing certain things, which we say now, when we see the facts, when the facts come out, are not the proper things for corporations to do. That will be question number three. And there may be other questions. But for right now, this is the basic.

So I started at the end. And that's all of this -- all of this is a preliminary to you answering these three and maybe there will be some others. But at least there will be, we think, these three, "yes or no."

And if you answer any of these questions yes, then your verdict is for the plaintiff, Mr. Maddox's family. If you answer them all no, then your verdict is for the cigarette company. And that's basically the deal.

And if you answer any of them yes, you then would be asked to see -- to award how much damage the family has suffered. And we will talk about that. It's hard to quantify that. So if you answer any of these questions -- so now we're onto the next question, all right. So let's put up M-1. Now, I'm going to --

THE COURT: Excuse me, Mr. Wilner, for interrupting you. But, ladies and gentlemen, I've given the attorneys permission to move around in the courtroom anywhere they want to see.

Also, what Mr. Wilner said earlier about coming and going, all of them don't have to be here all the time. So if they're not here, they're busy working on the case outside of the courtroom. So

don't read anything into the fact that some of the attorneys are not here or maybe even Ms. Widdick or Mrs. Maddox may come and go as they choose. Go ahead, Mr. Wilner.

MR. WILNER: Thank you, Your Honor. Well, let me get down to the brass tacks of this, of the case. The first thing I'm going to say is that Mr. Maddox, like all other people who use cigarettes, is responsible for his own action. We agree. We don't contest it. We agree that people who do things have personal responsibility, absolutely required.

It's the basis of this country. Without it, we can't exist as a society. There's no question. We do not contest it for an inch that the people who use whatever product are responsible for the use of that product. We absolutely agree, there

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is no contest of that.
Mr. Maddox did not do everything that he should have done. We agree. Some people did not use these products, although I hasten to add that in the '50s, 70 percent of adults used cigarettes, 70 percent. But maybe there -- those 30 who didn't use them, maybe they were smarter than Mr. Maddox. Maybe they were better informed. Maybe they were

better, I don't know.
But Mr. Maddox fell into that category, which was the majority, when he started using. And cigarette use has tapered off over the years. He was in the majority; but nonetheless, that's not a defense. That's not a defense. He is responsible.
So you say, Well, Wilner, what is this case about? How can we -- you bring the case, you just got up here and said Mr. Maddox was responsible. You didn't apologize for him. You didn't say he didn't know anything or, you know, it was -- the cigarette flew into his mouth from another planet or somebody held a gun to his head. You didn't say any of that.
How can you get up here, Mr. Wilner, and say you want Mr. Maddox's family to succeed in their claim that you think Brown & Williamson did something wrong. But Mr. Maddox is also to blame, without denying it.
I stand up here tall in front of you and say we take our medicine. That is not, that is not what this case is about. We take it. Whatever you want to say Mr. Maddox -- we'll go through, you know, what did he learn at different times. It's fine. He did, at times, know what some people would

say would be enough and some people might not say is enough. But we don't -- we're not trying to hide it. We are not trying to get out.
So here is the thing I'm leading up to. This case is, you know, there's something called -- just to explain the concepts of how these arguments are made, the Brown & Williamson Tobacco Company wants this case to be this (indicates), which is half a case.
They want to talk about the responsibility of Mr. Maddox, who is responsible. So we agree. We've also -- we don't contest it. But the law is -- I'm not telling you verbatim. I'm giving you just a concept, as His Honor, Judge Mitchell, will give you the law before you retire. But the law, as we understand it and the whole premise, the whole basis that we're bringing this case is that there are -- it takes two to tango. It takes two.
There are two parties, at least, who share some responsibility, some responsibility. So we are going to make this humble suggestion, and it's humble. This is what we're going to say. We're

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going to say that the great -- that this case can be a ledger, you know, like columns and things, you know, like a spreadsheet maybe. And let's divide,

divide what you're going to hear in this case into two sides.

One side is going to be Mr. Maddox and his responsibility. And I've done this on the overhead. The other side over here is going to be Brown & Williamson, their responsibility. Very interesting.

Now you say, Well, so what? Well, the theory of this case, and if, if you are -- if the instructions are what we anticipate they will be, is going to say that the issue in this case is whether -- not whether Mr. Maddox has responsibility, because we're going to go through that. We're not going to duck anything. We're going to list responsibility that Mr. Maddox has, stand up to it.

The issue in the case is not whether there's any in this column, because there is. The issue in the case is whether there's anything in this column at all or whether Brown & Williamson is scot-free, off the hook, zero, did nothing wrong, nothing, nothing.

And as we understand the law -- you may say, Well, Wilner, I don't know about this. But if we understand the law and the theory of this case is -- even if Brown & Williamson is, let's say, 40

percent -- we think that Mr. Maddox is about 30 percent responsible and Brown & Williamson is about 70 percent. I don't know how you put numbers on this stuff. We do our best.

Even if you find that Mr. Maddox is 50 percent and they're 50 percent, you still -- that still is on the hook. You say, well, okay, Mr. Wilner, if they're equally responsible, are they really on the hook. Yes. Yes, they're on the hook for something. You bet.

What if Mr. Maddox is 70 percent and they're 30 percent, they're still on the hook, if that's the law. And that's the law that you're charged with. And we understand that to be the law. Then they're still charged with something.

And, in fact, the only way that they can escape liability in this case, according to our theory, is if they're not even 1 percent contributory to what happened to Mr. Maddox, not even 1 percent. That's the only way they can get off is if at the end of the testimony their column is completely clear.

(Change of reporters, 10:00 a.m.)

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So this will be pretty interesting, I think, because we're going to -- we expect, Brown & Williamson will be putting things in Mr. Maddox's column, that he should have done this and he should have done that. And I'll talk to you about a few of them before I have a chance to sit down.

But, we say fine. The law does not forbid Mr. Maddox from recovering just because he might have something entered in his column, because he's less than perfect. Because he did something wrong. And in fact, he, although he's not here, we, his family, doesn't contest it. We take responsibility for whatever he did. We'll find out later, you know, what it was. Not so horrible. Whatever he did.

I want to introduce Ginny Steiger who will be my assistant and whisper things to me. Appreciate it.

So you say, okay, if that's the law and if your theory is correct, let me phrase it that way. Wilner, if your theory is correct, then this is very interesting because, although, you know, I suppose it's everybody walking around the street is going to agree that somebody at some time who uses cigarette products has got to know that there's something

wrong with them. And we don't doubt that for a minute.

But we have a couple, the rest of the story is where it really gets interesting. So Brown & Williamson wants to -- we foresee their theory of the case is one-half of the case. They want to blame Mr. Maddox. Say it's all his responsibility. Basically they're off the hook and their customers, it's their problem. The product goes out the door. What the customers do with it is their problem. They use it, they die from it. It's their problem. It's not us.

We say, our theory of the case is well, let's look at some more. Let's look at some things that maybe we haven't looked at before. And let's talk about how these two things can come together.

First, let's go back to the 1950s. Mr. Maddox began smoking Lucky Strike in the 1950s. What do you suppose, I ask -- because you don't answer me now. I wasn't asking you directly, not aloud. But what do you suppose was the story of cigarettes in the 1950s? Let's say 1950. Do you suppose they had on the package the word "cancer"? Nope.

Do you suppose that Brown & Williamson or

American Tobacco might have been on notice as of the 1950s that the products caused cancer? Yep.

How is that so, you ask? Okay, I'll tell

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you. How about we see No. 5. Dr. Alton Ochsner, a great man, ran the Ochsner Clinic in New Orleans. His partner, Dr. Michael DeBakey is still alive. Dr. Ochsner is not. Dr. DeBakey recently was consulted by Yeltsin in Russia, heart doctor.

Ochsner and DeBakey in 1941 -- 1941, nine years before Mr. Maddox began smoking Lucky Strikes -- published a paper which had tremendous circulation, very powerful paper. And they said in that paper that the number one cause of lung cancer was cigarette smoking. That really -- though there were papers before that going back to the '20s and there was a very famous study by Raymond Pearl in the 1930s that said cigarette smokers were dying twice as fast, but you could always say, well, we don't know why.

But in '41, in 1941, these doctors, which were at the -- they weren't necessarily at the height of their careers because they continued to go up, but they were very important doctors writing in a very important journal on a very important subject. Unfortunately the war was on, we agree,

but they said that lung -- cigarettes caused lung cancer.

And, you know what happened? Nothing. Nothing. There was nothing. Those packages of cigarettes continued to roll. We will prove to you that they rolled and rolled and rolled. They rolled into the war. They rolled after the war. The cigarette packages and anybody else said nothing.

Now, you could start right from the beginning and one of the theories of our case is what could have been done and what would have been prevented had the proper actions been taken by a responsible company from the start? Not at the end when, you know, when things were already -- after Roland Maddox had smoked for 40 years or whatever and had cancer and had -- and was addicted to anything nicotine -- and I'll discuss what I mean by that. But let's go back, you know.

Now, you'll say, oh, Wilner, you're talking about ancient history, you know. You're trying to tell me that they should be responsible for something they did in the '40s and the '50s? You know what? We are. Yep. There's no -- there's no time limitation on this.

And, you know, it's correct because if you

can bury your mistakes and get away from them because just you didn't get caught in enough time, then this would be a terrible country. So you bet we are. We're going to go back into the '50s and the '60s and the '70s. And we're going to look at what Brown & Williamson knew and how they had the opportunity to know and what they did with the knowledge.

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Did they go to their customers? Did they say, hmm, could be a problem here. Might get cancer. What a horrible thing. Hmm. Or did they say, no problem. Smoke them. Smoke them up. Well, we'll tell you without going through every step of the way that in 1986, as late as '86, and you can imagine all the medicine that went on between '41 and '86 -- I'll give you a little thumbnail. I won't have a chance to go into the whole thing, but you can imagine.

In 1986 their -- the chief, the CEO of their company whose name is Robert Highman, and we have his videotape will be played to you today when he was taken in an unrelated case back in 1986. And he said after all the science in the world had tried to convince these people, he said the surgeon general -- which I'll tell you about that, too, 20

reports. 20 reports on cigarettes. Important reports. He says, they're all wrong. Surgeon general is dead wrong. Our products are not injurious to health. They don't cause any disease. The head of the company in 1986.

So you say, well, Wilner so what? So the head of the company says that he doesn't -- it's not true, his product is safe. What difference does it make? Mr. Maddox, what did he know? And I say, well, this is a very interesting issue. When a manufacturer denies that its products cause harm for years, for 50 years, and we took you all the way up to '86 in one jump, but I'll go back and fill it in. What effect does that have on the world? What effect does that have on our culture, on how we accept cigarettes? On how many people smoke? On what doctors think? On what educators thinks? It had a huge impact.

We will prove to you that the attitude and the conspiracy of the cigarette industry engineered the acceptance of smoking for so long. Now, it's beginning to wear away. We are coming into a new era. And, you know, one thing that -- let me again talk about the theory of the case is people will come up to me -- this is just a hypothetical. It's

not evidence. I'm just talking to you in, you know, in theory. And they'll say, for instance, oh, you know, my grandfather smoked and he died from a smoking-related disease, but he didn't sue. So how come you're able to do it? Why do you think you're able to do it? And my answer, the times are a'changing. The times are a'changing.

So, all right, back to this. Dr. Ochsner 1941, silence.

Next, Dr. Wynder -- or Dr. Graham. Okay, 1950. If that wasn't enough, 1950, two very powerful scientists, Dr. Evarts Graham, who was the first person to remove a lung in 1930 and have the

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patient survive. An incredible accomplishment for the '30s. The leading thoracic surgeon of his day, and a medical student named Ernst Wynder wrote a paper in 1950 that says beyond all doubt, not just looking at the big picture but looking at our actual patients, cigarette smoking is killing them through lung cancer. And there's no other explanation that we know about. 1950 in Great Britain, where the BAC, the British American Tobacco Company is located. And I'll tell you about them.

Remember I said Brown & Williamson and American? I'm going to have to get somebody to help

me write because my penmanship is so terrible that I can't read it. All right. Remember that, Brown & Williamson and American. There's one other player in here, it's called BAT. BAT. BAT is the British American Tobacco Company. All right.

They have a deal with Brown & Williamson to share all their research back and forth across the Atlantic. All the research, all the knowledge. So BAT kept a lot of records. We've got a lot of their records. And they went into Brown & Williamson.

So when say see BAT, you know this is really Brown & Williamson's side over on the other side of the Atlantic which they had a research deal with.

All right, Evarts Graham, back to him. He says, 1953, he said -- 1950, Evarts Graham says with Ernst Wynder, it's really a serious problem. Now, what about -- well, I won't do that. All right.

Let's show Wynder. Here is the guy who writes with -- somebody laughed. Somebody made a joke. They said it looks like he's got a cigarette and a drink. It isn't. It's a test tube and a beaker. It's not a cigarette and a drink, but he looks like he's kind of on the nightclub scene

there, but he's not.

So Ernst Wynder wrote in 1950 cigarettes are the cause of cancer. And what happened? Nothing. Nothing yet.

Mice. Okay, well, things began to happen. And the cigarette industry said, oh, you know, these studies are just statistics. And you just -- what Wynder did and Graham did, they counted people in the hospital with lung cancer. They said they all smoked and the people who didn't have lung cancer, many fewer smoked. And they said two and two, let's put it together. And they did more and they said, look, clinically we understand how it could happen, the smoke gets in your lungs. We think there are harmful substances in there, this makes sense.

This is something that needs to be immediately, immediately -- it's of vital importance, because cancer is not a disease you want

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to play around with. Lung cancer especially.
Lung cancer, unfortunately, kills 95 percent of the people who get it. So it's not a disease that you fool with. And in this horrible case it killed Mr. Maddox within a year.
So all right. So in 1953 Wynder and Graham say, okay, you don't believe us, so we'll do

some laboratory experiments. And they get mice and they paint their backs with Lucky Strike condensate. Forty-four percent of the mice developed cancer on their back. And there's no question that that was publicized. I don't know, no one knows whether Mr. Maddox saw these mice -- or saw the news that came out of it. There was some news, there sure was.
The interesting thing is what did Brown & Williamson, what did American do about this? Do you think that they said okay, you know, since cigarette smoking is so prevalent, 70 percent of people are smoking them, this is a bombshell if it's true. It's a bombshell. I mean, this is a bombshell. Today we accept these things because times have changed. But in the '50s, this was unknown. This had tremendous significance.
What did they do? Well, let's see what they did. I'm going to jump ahead to the Frank Statement which is 38.1. What they did is instead of leveling with the public, instead of going out the way that civilized people should do and share the information with the public, instead of putting their top research people on this immediately and starting to get these cigarettes safe, instead of

going out there and saying if you don't want cancer, you don't smoke. This was the '50s, remember.
What do they do? Well, they come out with something called A Frank Statement to Cigarette Smokers. And I know the print is small, so I'll read a piece of it. It's not an eye test, but it's the only copy that we have.
Now, the first thing I want to tell you is who did it? There were a whole bunch of people that got together. And their names are on the bottom, and you will have this exhibit. You'll have this as a piece of evidence, so you can look at the original -- well, I don't know if it's the original. It's a copy, of course, but it's the same one.
And it says the American Tobacco Company, and that is now them. Brown & Williamson. It also has Brown & Williamson, so back then they were two different companies, but they talked. It also has some other tobacco companies that you may hear about, Philip Morris, R. J. Reynold, and it has some that we never heard about Larus Brothers, who are probably gone, Lorillard, and some others.
But anyway, they all got together to do

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this. And it's signed by something called the Tobacco Industry Research Committee, which we all

abbreviate to TIRC, which is an organization that they formed in response to the Wynder-Graham mouse painting studies in the 1950s.

Again, why am I telling you about what happened in the 1950s? Why don't I tell you about what happened in the l980s? Because the 1950s set the tone for what this country would do with cigarettes for the next 30 years. And it's only in the '80s and the '90s that we begun to come out of this thing, that we have -- the consumption has really dropped, that the information is out there. But this really was the beginning. This is the declaration.

It's not the declaration of independence, unfortunately. It's the declaration of conspiracy. And what did it say? Okay. Well, it said recent reports on experiments with mice, which our theory of the case is that's kind of belittling these important experiments, have given wide publicity to a theory that cigarette smoking is in some way linked with cancer, lung cancer in human beings. Then they go on to say they were conducted by doctors of professional standing. These experiments are not regarded as conclusive in the field of cancer research.

Well, I'll get to that in a minute. However, we do not believe that any serious medical research is needed. Lightly dismissed. Then they go on to say, distinguished authorities point out there is no proof that cigarettes smoking is one of the causes -- and by "one of causes" what they mean is the cause of lung cancer. There is lung cancer right there. They say that they don't believe in the statistics. They say they accept an interest in people's health as a basic responsibility paramount to every other consideration in our business.

One of the things we'll present as our theory is whether they really carried that out. Did they really in everything they did believe that the interest in people's health was paramount to every other consideration in their business? Perhaps. We will argue, perhaps. Perhaps that is the correct standard. And now we have to see as history rolled on whether they lived up to that standard, because if they didn't, if they didn't, then perhaps there's something in their column and that's why it's important.

Okay. So what they say is we're going to get together and create a research committee called the Tobacco Industry Research Committee, and we're

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going to go ahead and basically according to our theory and what we will present evidence on, this is a whitewash that says, don't worry about it. We're going to get back to you. We'll find out if there's a problem. Don't worry about it. We'll call you if there's a problem. Meanwhile, you keep using.

According to our theory as proof that we will fill this in with documents from the time and so forth. Now, the interesting thing is, there's only one person still alive who was at this meeting. And his name is Irwin Tucker. And we propose to bring you the testimony -- he's ill and he can't come to court, but we took his deposition out of court, and the court reporter wrote down what he said.

And Irwin Tucker, who was one of the people here representing Brown & Williamson at the time, said that when they made this statement, there's no proof that cigarette smoking is one of the causes, that they didn't have a darn thing to back that up. They did not have a thing. They winged it. They just went in there and sat. They didn't have the research. They weren't sitting there saying, oh, yes, we've got a study here that shows that Wynder's results that these terrible

things, these cancers, that they're not true. They had nothing.

So why did they say that? Is that -- our theory of the case is that is not -- this is a beginning. It sets the tone. This isn't the whole case. This is just a tiny part, but it sets the tone that here they are telling the public -- and this went to every major newspaper in the country. Did Mr. Maddox see it? I don't know. It certainly was out there. And there were other things out there. And this said there's no proof. And Irwin Tucker says at the time they made that statement they basically had no proof. That there was no proof. They had no reason to say that. Now, okay -- so let's go back to M-1, the column.

So one of the things that -- now, let's talk about something else. Because I want to be fair to Mr. Maddox that he has something in his column. Reader's Digest, kind of a -- I don't know how important it is a magazine today, but it was a pretty good magazine back in the '50s. Almost everyone remembers it. We don't know whether Mr. Maddox had it or not. We don't think he did. We'll ask Mrs. Maddox about it. I just don't remember.

But Reader's Digest had articles which said smoking was dangerous. They were one of the few in the world that had the guts to take on the industry and do this. But they did. Hats off to

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them. Wonderful.

Now, the theory of Brown & Williamson is that because Reader's Digest said that that they don't have any other responsibility to tell their customers what the truth is. Our theory is that you can hear it from Reader's Digest, but when you -- you are entitled as a customer to see it on the package, because people can make claims about products. People can say that's terrible. You shouldn't use it. But you know what? Our theory is if you -- if the manufacturer says that it's bad, I think that you believe -- and I don't mean I think personally, figure of speech. We think that the manufacturer wouldn't say it because it's against interest to say that. You don't say your product is dangerous unless, you know, it is, and you're doing the right thing. You don't make it up. You wouldn't make it up. So what is more powerful than it coming from the manufacturer? Something that actually says their product is harmful. And the answer is nothing. So we agree, Reader's Digest was

there.

If you find that Mr. Maddox read Reader's Digest and didn't believe it, and you can see what they said and they said they talked about Wynder. And they said, you know, this may be a problem. Did people believe it? I don't know. Seventy percent were smoking.

But if you find that Mr. Maddox read it, I don't know whether he did or not, and you think that he should have believed it and he should have just said right then, I'm going to be one of the 30 percent instead of the 70 percent, fine. We don't -- we're not going to fight that. So what. Put a check in his column for that. But let's look at their column while we're in the business and say who knew first about the dangers? Reader's Digest or Brown & Williamson? Brown & Williamson.

Who was responsible for looking into the true scientific literature and not just what's published in Reader's Digest? Brown & Williamson. Who had access to Ochsner and DeBakey paper? Brown & Williamson.

Who had access to the scientific papers on the mouse painting and the epidemiology? Brown & Williamson. Did Mr. Maddox have that access? Of

course not. He's not held to that standard to read scientific journals. They are. They're the manufacturer.

So if you're going to check him for Reader's Digest, you got to check them, which says why didn't they read it? If they didn't, they should have. It's unclear exactly how much they read, but they had an obligation at that time, cannot get out of it. Cannot shake it. Who knew

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first? Who knew more?
Our theory of the case: Who knew more? Who knew more about cigarettes? The manufacturer with facilities that they share research with in London? The American Tobacco Company with its own set of scientists with access to a medical library with funds to do research on its products? To determine what's bad about them? How they kill people, if they do? Who knew more?
Or somebody in the public, part of 70 percent of the people who smoked at that time with Reader's Digest, if they had it. I don't even know. We'll find out. So that's an interesting thing.
How about the concept of misuse? You know, if you're blaming somebody for using a product, most of the time you say they did something

wrong with it.
If you have a Ford Bronco and you drive it 100 miles an hour, assuming it goes that, and it goes into a brick wall and you go and say, Ford, you didn't design the Bronco right. Well, I say you're out of there because you misused that product. You didn't do what the manufacturer intended.
Well, it's a good question. Did Roland Maddox misuse cigarettes or did he do what the manufacturer intended?
Well, we asked Brown & Williamson that question. They said no, we didn't misuse it. We never said there's a limit to how much you can smoke. And he smoked about two packs a day. We never said you shouldn't smoke that.
Heimann, the American Tobacco man who we have on tape, he says, it doesn't matter. He says, we want you to smoke as much as you can. Smoke them all up, buy another pack, smoke it up, buy another pack. They've never said -- they never said limit.
So you say, well, wait a minute, you know, isn't that common sense that you don't smoke too much? Well, I don't know. Common sense? Maybe. So put another check in his column for that. If you think he smoked too much, put it in his column, but

put a check in Brown & Williamson's column, according to our theory for not telling him. Why not? Why not? What would be the harm? Limit your consumption. Limit. Be careful. What would be the problem? Is it impossible to say that?
Okay. Now, I'm going to talk about the cigarette warnings. And when I do, I think you'll be mildly surprised of what the truth is. Okay. I'm running on, aren't I?
(Change of reporter, 10:22 a.m.)

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MR. WILNER: Let's look at the warning page. First, the -- no warnings. Caution label. I'm sorry. Okay. Let's first talk about what everyone knows a little bit about but nobody knows, it seems, really all about, and that is what has been printed actually on the package.

Now a lot of people today think it's always been printed what's printed today, but that isn't true. So this summarizes what all -- what printed material has been on the packages since 19-whatever, because pre-'66 nothing. Now already we told you that our theory of the case was that the knowledge was available to Brown & Williamson since 1941 at least, maybe before. And before 1966 there was absolutely nothing. Nothing. There was no hint on the package by the manufacturer. To be sure, there were publications in the popular press. We don't dispute that. If you happen to read it, that's great. If you happen to believe it, that's great. Put a check in that box.

What we want to know, what we challenge Brown & Williamson is to explain to us. We are going to make that challenge in this opening statement. Explain to us why, with the knowledge available to you in the scientific community that this product was deadly when used as directed, you did not make any attempt to warn

your consumers. Defend yourself. Tell us why. Give an account.

Mr. Heimann in 1986 said, Well, you know, we didn't believe it. But we think all the other people -- we think Mr. Maddox should be held to believing it, but we didn't believe they were harmful, but we want to blame our customers if they used it, but we don't believe them ourself.

1966 to '70, "Caution: Cigarette smoking may be hazardous to your health." We'll present evidence that that ain't good enough. You are talking about cancer. You have got to be serious. You can't say, Caution, maybe anything -- anything maybe. Some people say, well, he saw the package and he ignored the warning. Oh, really? Our theory of the case is does that warning say don't smoke. It says, "Caution." Sometimes it's hard to believe because, you know, we are in a different era now, but that's what it said.

The next warning from 1970 -- these are all

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federally required. We will present evidence that the industry -- that Brown & Williamson did not in these warnings do anything voluntarily that it did not have to do by government. And certainly when it was not required pre-'66 it didn't do it. 1970 warning to '84 says, "Warning: The surgeon general has determined that

cigarette smoking is dangerous to your health." And the 1984 to present warning says -- is the present one which has for the first time lung cancer. That is since 1984.

Now the cigarette industry for some claims that we make has a legal protection. From 1970 on, because of this federal warning we cannot and we do not -- we are not allowed to ask for damages based on this warning in 1970 being different -- whether we think it should have been different, it doesn't matter, because the government required -- the government told them that if they put that on, that's okay. So from 1970 through today we can't -- we can't challenge them for the warning that they put on the package.

We can challenge them for conspiring with other companies to conceal the truth. We can challenge them all the way up until today for making a product that's not reasonably safe. I haven't talked to you about that because that's another side of the case, but just to get this straight, we don't -- we are not allowed to challenge, and we don't, from 1970 just the warning on the package. On the other hand, we do challenge -- we're allowed to challenge that they conspired amongst themselves to prevent the truth from being known, and they did a good job. Not all of it. They didn't succeed a hundred percent, but they had an

effect.

And number two, that they didn't do their duty to design a reasonably safe product, and I am -- I've only got about five minutes to tell you that. So anyway, this is the deal. Yes, there were printed warnings. We do challenge this one. This one is absolutely ridiculous. We do challenge everything that happened before 1966, warning only.

Okay. I promised that I would tell you a little bit about the product. So let me -- let's go to 23. Mr. Maddox began smoking in 1950. After he smoked for twenty years nicotine affected his brain. In 1988 the Surgeon General came out and said nicotine is addictive. Cigarettes and other forms of tobacco are addictive. Nicotine is the drug in tobacco that causes addiction. The pharmacologic -- which means drug-like -- and behavioral processes that determine tobacco addiction are similar to those that determine addiction to drugs such as heroin and cocaine.

Every time I talk about addiction -- this is '88. Now been accepted by everybody from the cigarette industry that nicotine affects the brain in such a way that it's like a drug, and it causes an addiction.

So the first time I say that, people say,

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25 Well, does that mean no one can quit? And the answer is

1 no. That's not what I mean by "addiction" at all.
2 That's silly. People get over addictions all the time.
3 They get over heroin addiction for that matter. You can
4 be treated for an addiction and you can get over it.
5 That's not what I am talking about.
6 An addiction is something that affects your
7 brain like a drug, and it changes your brain. It makes
8 a change inside your brain, and we will show you
9 scientific studies where it actually changes things
10 called receptors in your brain. So that the people they
11 did an autopsy study of people who are smokers versus
12 people who aren't, and they could tell the difference in
13 their brains. Good Lord. It changes your brain. Well,
14 okay.
15 So I said though that that doesn't mean that
16 you can't quit, because when you are addicted to
17 something, you can. It can be a bear. Well, this
18 addiction is a disease, and it's caused by cigarettes.
19 It is not -- it doesn't make you into a robot, but it
20 can make you darned close is our theory. It can make
21 it -- it's a hell of a burden on you. We have all got
22 our stories, and you are going to be asked to leave your
23 stories back, you know, with you, because you have all
24 got stories, I am sure, of somebody who did quit,
25 somebody who couldn't quit, somebody who could, somebody

1 who tried. Who knows. Apparently, and our evidence
2 will show, it affects people differently. Some can walk
3 away. Some people can run 50 miles. Some people can
4 walk away from cigarettes. Some it is the hardest thing
5 that they ever do. That's the nature of addiction, and
6 people are different.
7 Okay. Was Mr. Maddox addicted? Sure. There
8 is no question. Did he try to stop? Many, many, many,
9 many times. Did he fib, lie to his doctors? Yes. He
10 did at times. He was so ashamed that he couldn't get
11 control of himself. He said, I haven't smoked in seven
12 months, and it wasn't true. He had. Why does a person
13 do this? What would cause them? Well, our theory is
14 and we will prove to you that people really don't want
15 to feel that they are out of control. I mean, no reason
16 why you should be able to put these things down and walk
17 away. Now, I have had it.
18 Kind of like saying, you know, boy I ate so
19 much last night, I am not eating for another week.
20 Well, a couple of -- I mean a couple of hours, you miss
21 a couple of meals, and all of a sudden you don't have
22 quite the resolve you did. We understand that. People
23 aren't perfect, and it's true you can put the cigarettes
24 down and you can walk away.
25 But if there is something going on in your

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brain with this nicotine drug, how strong are you? How strong is a person who hasn't had water for two days, and you hold up a cup of water. You could resist. For how long? I don't know. This is human nature. We don't know. We do know this though, and this is what I am coming to. First I had to tell you that addiction is not -- we are not claiming that no one can quit and all of this stuff. We are claiming that it's one additional burden that makes the cigarettes exceptionally dangerous. Because complete with the carcinogens in the product comes this addiction which tends to want to make you keep using them.

And it's not just a matter of you take one hit of carcinogens and that's it for the day. You keep hitting them and hitting them and hitting them. Well, why do you do that? Because it's part of the deal. Now why do I say that? Cigarettes were designed with this in mind. That's the shocking truth. Cigarettes were designed, and I can't tell you who or what or -- that we have one document that says -- this is my brainstorm, but cigarettes were designed to be used all day for people in an addictive pattern, because they are convenient, they are quick, they don't require loading like a pipe.

They were designed to be pulled right out of

your pocket and used, and the way that they are designed, the way that the smoke is flavored to be inhalable, the additives that are put in are -- some are bronchodilators to get that smoke deep in your lung. And there are no taste receptors in your lung, so the only reason to do that is to get the nicotine into the blood. Cigarettes are the most perfectly designed addictive nicotine delivery devices in history. Let's put on the -- I'm sorry. I will use this.

And this is what they have caused. This is -- this is the lung cancer one. This is the sad, sad tale of the epidemic of lung cancer in the 20th century caused by cigarettes, caused by the addictive quality of cigarettes, the fact that they are used habitually over and over and over again. You see that there are very few cancers that are going up. Stomach cancer is going down. Prostate cancer is holding up its own, going up a little bit. This is 1930. Look at how little lung cancer there was back then. It's not a natural disease. It doesn't happen to people without something happening to them.

And all of a sudden it starts to take off. And it goes up and up and up and up, and our -- according to our proof -- how much time? Okay. According to our proof, it's insanity that that

happens -- cigarette consumption. And look at this. This is cigarette consumption. This is 1930 right here. Look at 1900. Cigarette is a new product. I will bet a lot of us thought that cigarettes have always been around. Tobacco has, but we are not here talking about

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tobacco. We are talking about a designed cigarette rolled just right with just the right flavoring on it to get the smoke right into your lungs and get the nicotine right into your brain so you like it, and you want it more and more and more. And pretty soon you get a change in your brain that follows you all the way to your grave.

So this is the consumption curve, cigarettes in this century. Look at how powerful this force was that caused people to start smoking. Back in 1900 almost nobody smoked cigarettes. In 1960 it was 70 percent of adults. What happened here? Well, you know those 19 -- remember the 1966 warnings? Right around there there was also some publicity came out. The Surgeon General wrote in 1964, and it dropped off, because information is important to people.

Did Mr. Maddox get the Surgeon General's report in the mail? No, surely not. It went to doctors. Did he hear something about it? Maybe. I hope. Some of the people stopped. Not a lot, but some

did. So information is vitally important. Went back up again. A lot of cigarette advertising. And then it dropped off, and it's been dropping off. Information is coming out. The veil of secrecy is breaking. All right. So back to the addiction bit.

Why did I talk to you about addiction? It wasn't really to just say that Mr. Maddox couldn't quit because I don't mean that, although he certainly had to deal with this drug problem, and unfortunately he did not deal with it successfully. If you want to blame him for it, that's okay too. But his drug problem was partially caused by -- and when I say "drug problem," I mean nicotine. He didn't have any other drug problem. I mean nicotine. Was partially caused by the way that they designed these things, and the fact that they got it to him in a way that was extremely acceptable to him. So -- 26.

Well, how interesting then that we have found that back in 1963 there was a paper done, and this is one of many, just an example. There was a paper done by a researcher in England for the BAT. That was sent over here to Brown & Williamson. And this was in 1963, long before scientists or anybody else were realizing this nicotine addiction. Remember, the Surgeon General didn't say it was addictive until '88.

But in 1963 there was one of many papers written, and it said -- this was called, "A Tentative Hypothesis on Nicotine Addiction," and it's by a Brown & Williamson -- it's by a laboratory called Battelle Labs which was hired by BAT which was -- and this report was sent to Brown & Williamson. And it says, "A tentative hypothesis for the explanation of nicotine addiction would be that of an unconscious desire to restore the normal physiological equilibrium of the" -- and this is some drug word -- "corticotropin releasing system in a

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body which the normal functioning of the system has been weakened by chronic intake of nicotine." "Weakened."

Now, in 1963 Brown & Williamson -- and this information was available to American Tobacco as well had they done the test. And we have evidence that they might have received that directly, but certainly it was available. They could have done the same research. That information that not only were they dealing with a horrible carcinogen. You know, the actual numbers will scare you. 50 percent -- 40 to 50 percent of regular cigarette users die prematurely, and that's not my figure, from cigarettes. It's an astonishingly bad deal. It's a horribly bad deal. And it's really triggered by this habitual use, this addictive use pattern.

It wouldn't be such a problem if it was just one cigarette a week, but it's not. It's two packs a day or one pack a day, over and over and over for a life time, and that is triggered by this -- by the nature of the product.

Okay. So back in 1963 they say, Here is an explanation for nicotine addiction. It's because it makes a change in the brain, and the brain has been weakened by chronic intake of nicotine, and that is something that Brown & Williamson knew about, American knew about. It's only one tiny piece. There's a big thread. The Surgeon General, incidentally, was writing a report for the first Surgeon General report. It asks -- the Surgeon General's committee asks the companies, would you tell us what your research found out about cigarettes. They wanted to know. Was it sent? Should have been. Never made it.

Can the Surgeon General report in '64 that nicotine was addictive? No. Reported it was a habit. Did that make a difference? Use your judgment. Our theory of the case is it's a huge difference when you are dealing with something that has the capacity to act like a drug than if you are just saying, oh, it's just a habit. Anybody can break it. Big difference in public health, big difference in the way people have to treat

it and how you get off of it.

You know, maybe it takes help. It takes some help. You have got to go, and you have got to get some help. You have got to be on a program. There's drugs, Ziban, because -- there wasn't then because nobody knew it. Meanwhile, the use was climbing and climbing. Now let's go back to M1.

We are not very far along on this column, and I am about out of time, so I am going to ask that as the trial goes on, keep your own column. Maybe this isn't the right column. Maybe you will have insight about how the negligence -- or, rather, responsibility of Mr. Maddox should be compared with the responsibility of Brown & Williamson. And in this short time I have no way to tell you all the evidence going to be mentioned

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because it's going to take, you know, quite a few days.
We do know that in 1963 or thereabouts Mrs. Maddox was told to stop smoking because she had a goiter by her doctor. Well, Mr. Maddox didn't have a goiter. He tried to stop anyway. I guess he figured if it was bad for her, for a goiter, maybe it would be bad for him. Tried to stop and couldn't. So I have taken the liberty of including that in his column. I would also put something in their column. I mean, in Brown & Williamson's, so let me show you this.

This is a family picture of the Maddoxes. This is Angela Widdick who sits before you today. This is her dear father. This is Mrs. Margaret Maddox. This was taken in the mid '50's. I don't know if you can see it, but that's a carton of cigarettes. This was supposed to be a happy day. These children were so delighted to be giving this package to their great -- to their loving father, and he was happy to get it. He was really happy.

I mean, when Mrs. Maddox is on the stand, perhaps we can ask her whether she knew what was happening then, you know. It's a good question. Did you know you were handing Mr. Maddox his death, sentencing him to death when this beautiful picture was made? It's a very interesting question.

Now interestingly enough also, at that same time -- where -- this is what American Tobacco was telling people to do. Telling them to remember Dad. Give him the Lucky's. Give it to him. It's almost the same box, from the same time period. Well, they gave it to him. Our theory of the case is when this was done, this and the hundreds of other advertisements that went out at the time, or this one is a little before it even, doctors, Luckey's, doctors, it was okay. Here is another one. Be happy. Be happy and go Lucky. We have

all seen these.

This was done at a time long after American Tobacco had the material inside its own company that said that, you know, you may be happy for a little while, but 50 percent of the people who use these things and pay you for them and are your good customers are going to be dying a death that nobody could possibly imagine. But they wanted to be happy. Some people were happy for a while.

And the last thing I will show you, there were good times and not so good. And so we will prove to you -- our first witness will be a doctor from Johns Hopkins University who is an expert in how carcinogens affect the body and how they cause cancer inside your body, how they hurt you from the time you begin to use them, and that hurt probably doesn't ever go away. It doesn't mean that you shouldn't stop. It just means that it begins to hurt you. The cancer gets in your body really early.

It doesn't happen -- it doesn't always come

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out. It doesn't always kill you, but it's there, and it probably never goes away from the time you start, all the way back, and that some people walk away from it. Some people don't get it. But this is a sad case. This wasn't supposed to happen, I guess. That's what's

happened to Mr. Maddox. Angie's dear father, Margaret's dear husband. So they had some good times and they remember -- three gave him the cigarettes, and now we are here, and I am about done.

There is obviously a lot more to this case than I have told you, because I would be up here for days, and I would enjoy it, but probably you wouldn't. So I have got to sit down, but I will leave you with this. Our theory is Mr. Maddox was a frail -- was a great man but a frail man like all of us, like any of us. He did what many people did during the time that he did it. In retrospect, if any of us could go back and change and yank that cigarette out of that picture, we would do it. And that's really too easy.

We suggest our theory of the case is if that's all there is to it, if you just want to blame him for something he did, fine. That's fine. That's -- if that's as far as we are going to go, we will take the blame. You tell us get out of here, we are not worth listening to because if that's all there is to trying this case, we will give it to you right now. But we think that there is more.

We think that there is a story here that we have got to tell you. And we think that this civilization, our great country has reached a point

where it's time to hear it.

THE COURT: Ladies and gentlemen, it's about ten minutes till, or almost ten minutes till. I am going to -- we are going to take the midmorning recess. I am going to ask that you come back at ten minutes after eleven. Please do not discuss the case among yourselves or with anyone else, and during this recess, as with any recess, you are free to go wherever you wish as long as you are back here in the jury room.

Every time you come back from a recess, whatever the recess is, unless instructed otherwise, come to the jury room, and once you all are gathered into the jury room, we should be able to start right at ten minutes after eleven. We will be in recess until ten minutes after eleven.

THE BAILIFF: Court in recess until ten minutes after eleven.

(Change of reporters at 11:50 a.m.)

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THE COURT: Mr. Wilner, I take it you have no problem with moving the table over?
MR. WILNER: We're happy.
THE COURT: I think it was a great idea. I don't know why we didn't think about it during jury selection. It would have made it a lot easier for the logistics of it.
I assume you're going to take about the same time?
MR. NYHAN: I don't think I'll be as long, Your Honor. So I hope that if we have to go, say, till 10 past or 15 --
THE COURT: Well, we'll go until --
MR. NYHAN: -- past 12:00 it won't be an inconvenience.
THE COURT: -- you're finished. Then we'll break.
MR. NYHAN: All right.
THE COURT: I'm not trying to put any time limit on it. Mr. Wilner seemed to be concerned about the time. I didn't know if you had agreed on the time.
MR. WILNER: No. I was just trying to get it done.
THE COURT: No problem. We'll go until

you finish. Ready to proceed?
MR. NYHAN: Yes, Your Honor.
THE COURT: Ready Mr. Wilner?
MR. WILNER: Yes, Your Honor.
THE COURT: All right. Bring them in, please. I'm just going to tell them that we've moved the table back so it would give us more room to show the exhibits and stuff.
(Jury enters courtroom)
THE COURT: Ladies and gentlemen, as you have noticed, we've moved the table back so that we'll have more room to show the exhibits and so forth. We probably should have done that sooner, but we just thought of it.
So, Mr. Nyhan, are you ready to proceed --
MR. NYHAN: Yes, Your Honor.
THE COURT: -- with the opening statement?
MR. NYHAN: I am.
THE COURT: All right. You may proceed.
MR. NYHAN: Thank you, Your Honor. May it please the Court, ladies and gentlemen, let me introduce again my colleagues who represent the American Tobacco Company and Browning & Williamson

Tobacco Corporation. As I introduced myself to you yesterday, I'm John Nyhan. Tom Riley and Edwin Browning will also be representing the defendant here today.
This isn't a referendum on smoking, as Mr. Wilner would have you believe. This is a lawsuit for money brought by one of Mr. Maddox's

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three daughters for her benefit and the benefit of his wife. The lawsuit for money is why we're here. We're not here to decide if smoking is moral, smart or right, or whether smoking should be made illegal or whether a tobacco company is likable.

It's a very straightforward case about whether the family of someone who chose to smoke in the face of a lifetime of anti-smoking messages and warnings should recover money for what they apparently think was their family member's wrong choice.

Now, plaintiffs and their lawyer want you to believe that Mr. Maddox was a man too frail, too weak, to break a habit that more than 50 million other Americans have broken. They would have you believe that Mr. Maddox lacked the ability to think, that he was incapable of deciding for himself whether to smoke or not to smoke.

Plaintiff's lawyer would like you to think of Mr. Maddox as a man who knew nothing about the risk of smoking, a man who never read a newspaper, never watched television, never watched the news or never talked to anybody, a man they want you to believe had his head buried in the sand for 50 years.

Now, his wife and the daughter who is suing here have even said that until 1996, two years ago, neither of them realized that each pack of cigarettes has a warning about cancer, heart disease, emphysema, the other things Mr. Wilner showed you on one of the boards he put up, and other health risks of smoking, even though almost every member of the family smoked.

Now, Mrs. Maddox claims that she never heard that smoking could be harmful until two years ago. Her deposition was taken on February 17th, 1998.

She was asked, is it your testimony that the first time you cared whether he, Mr. Maddox, quit smoking or not was in 1996.

And the answer she gave on February 17th was, yes, because then I found out what's inside cigarettes.

A month later she changed that answer. And I'll show that to you in a moment.

Another question was, prior to 1996, you had never heard that smoking could be harmful to your husband's health.

And her answer: No, I never read any cigarette label. I never paid any attention.

That was the answer. Those were the answers on February 17, '98. Now, after the deposition the testimony is typed up in a booklet. And it's sent to her lawyer. And it's provided to the witness. And the witness can read it. And the witness has a right to change her testimony. And that's just what she did with respect to this answer.

Let me show you what she said there in the change. She changed her answer a month after her original testimony.

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Question: Is it your testimony that the first time you cared whether Mr. Maddox quit smoking or not was in 1996?

That's her original answer. We've already read that.

The revised answer: Yes. I cared in 1996 and the many times he tried to quit.

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She did not try to change the answer to this question: Prior to 1996, you had never heard that smoking could be harmful to your husband's health?

No. I never read any cigarette labels. I never paid any attention.

That's still her answer.

Now, since 1966, every pack of cigarettes sold in the United States has had a warning on it. And every pack of cigarettes that the Maddox family bought since 1969 contained a warning, as Mr. Wilner has described, that has been approved by the federal government, and that no other warning may be required. So they have no claim for any failure to warn, other than what the government required beginning in 1969. The government has determined that that warning that's appeared on packages since then is adequate. Yet, that warning was on every pack of cigarettes sold since 1969.

Mr. Maddox, as you're going to hear from the evidence, worked at Winn-Dixie for 20 years. For many years he sold cigarettes. And the evidence is going to be that he sold over 200,000 packages of cigarettes that contained the only warning that may be required on cigarettes.

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Their lawyer wants you to believe that Mr. Maddox didn't know smoking might be bad for his health and that they, the plaintiffs and Mr. Maddox, never once noticed those warnings that have been appearing on every pack since 1966.

Now, the evidence will show that Mr. Maddox was a friendly and an outgoing man who frequently discussed the risks of smoking and lung cancer with his fellow workers. He's a man who ordered and sold cigarettes as part of his job at Winn-Dixie. One of his responsibilities was to place the order for cigarettes sold at the Winn-Dixie store where he worked.

He was a man who for years referred to cigarettes as cancer sticks and coffin nails. He's a man who joked with his friends at work that he was gambling with his health by choosing to smoke.

His coworkers, one of those folks, Judith McGoldrick, who worked with Mr. Maddox for ten years, from 1985 to 1995, at Winn-Dixie, she's testified that she knows that Mr. Maddox was aware of the health risks of smoking, because, among other things, she frequently discussed those health risks with him.

Ms. McGoldrick, a Winn-Dixie employee,

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her deposition was taken in the case. She and other coworkers have testified that Mr. Maddox was well aware of the risks of smoking.

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She was asked: Did you ever on any occasions have any conversations with Mr. Maddox about cigarettes smoking?

Her answer: I told him they weren't good for him.

When did you tell him that?

Probably the whole seven years he was here smoking -- when we worked together.

And what would be his response or his reaction when you would make that comment, that smoking wasn't good for him?

He laughed at me.

Another coworker, Karen Poole also worked with Mr. Maddox at Winn-Dixie. And she's also somebody that Mr. Maddox would smoke with at the Winn-Dixie store. They had an opportunity to take a break. Mr. Maddox and Ms. Poole would go outside, sit on a bench in front of the store and have a smoke together.

She was asked at her deposition: Do you ever remember specifically anyone else making comments in Mr. Maddox's presence about cigarette

smoking, the dangers of cigarette smoking?

Her response: People make comments all the time about the dangers of smoking when you're sitting out in front of the store. It's a constant thing.

She was asked: What kinds of things do they say?

She answered: Are you ready for an early grave, or you know that smoking is bad for you and things like that.

Mr. Maddox sold cigarettes to store customers. He frequently joked with those customers that they were buying coffin nails and cancer sticks. And that term was used by him and around him for years.

Another one of the folks who worked with Mr. Maddox, George Major -- is that going to block your view?

Mr. Major testified. He was asked -- he's another one of the coworkers who knew that Mr. Maddox was well aware of the risk of smoking.

He was asked: Do you recall being in the presence of Mr. Maddox when you used the term cancer sticks as somebody else did?

Yes, sir.

Did Mr. Mr. Maddox ever ask you or anyone else what was meant when that term, "cancer sticks," was used?

No, sir.

Did he show any surprise or any look of dismay when he heard that term applied to cigarettes?

No, sir.

How about the term "coffin nail."

Same term. It's just used a lot.

Was cancer stick a slang term you used around Mr. Maddox?

Everybody that smokes uses that term.

Now, the only people who say that

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Mr. Maddox was not aware of the risks of smoking are the people who stand to profit from this lawsuit. Mrs. Maddox and Mrs. Widdick say that Mr. Maddox had no idea smoking could be harmful. Everyone else says that Mr. Maddox was well aware that smoking could be harmful. The witnesses who had nothing to gain agree that Mr. Maddox knew there were health risks associated with smoking.

Mr. Maddox's former son-in-law, Gene Gladstone -- they met in 1972 -- has testified that Mr. Maddox called his cigarettes cancer sticks and

coffin nails and that he used those terms around the house in the presence of his wife and his daughters, even though his wife and the daughter who is bringing this lawsuit now deny that.

Mr. Gladstone was married to Mr. Maddox's oldest daughter, not the one who's bringing this lawsuit. And he testified at his deposition that Mr. Maddox talked about the health risks of smoking.

He was asked: Do you have any recollection of any specific comments that Mr. Maddox may have made about the subject of the hazards of cigarette smoking?

His response: Yes, we both talked about it. It's just the opinion of the Surgeon General and that everybody was going to die of something. There was one time we were discussing some old man around 90 years old who got hit with a bus and got killed. And an article in the paper said he never smoked or anything. And we just said, you know, that's what happens. You never smoked or anything, and you get hit with a bus. Mr. Gladstone says that -- says the same thing as all of the people that Mr. Maddox worked with, Mr. Maddox knew the risks of smoking and that smoking could be harmful.

He chose to smoke anyway.

Although the plaintiffs in this case want you to believe that no one in the Maddox family knew until 1996, nobody knew until 1996, that there were warnings on cigarette packages. Mr. Gladstone testified that Mr. Maddox knew very well that there were warnings. Mr. Maddox talked about the warning labels on cigarettes.

Mr. Gladstone testified. He was asked: Were there warning labels on the packages that Mr. Maddox smoked?

Yes, sir.

Did either one of you ever point the warning labels out to the other one?

Yes.

Did you and he discuss the fact that there were -- that there were warning labels on cigarette packages?

Oh, yes, sure.

Mr. Maddox obviously knew the health risks of smoking, but he enjoyed smoking and he chose to smoke anyway. His family members all admit that he really liked to smoke.

Mr. Wilner didn't tell you this, but in 1994 Mr. Maddox decided to stop smoking, and he

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did; moreover, he didn't need any help, any medical help, any counseling or a patch or any device to do it. One day in 1994 he simply stopped smoking.

It's pretty clear that if he had wanted to stop sooner, he could have and he would have, but he didn't. He made a choice. For 48 years he chose to smoke.

Then, in 1994, he developed a serious prostate problem. And that's when he decided to stop smoking. That's what his medical records show, and that's also what his coworkers at Winn-Dixie say happened.

I mentioned Karen Poole earlier. She's testified that when Mr. Maddox chose to stop smoking, he did so without any assistance and he never smoked again.

She was asked: Did he tell you whether or not he had used any particular method to quit smoking?

Cold turkey.

Did Mr. Maddox tell you about an experience in quitting smoking in 1994?

He told me he wasn't having a problem quitting.

After he quit did you see him smoke at

all?

No.

Did you see him with any cigarettes?

No.

Now, Mrs. Poole worked with Mr. Maddox almost every day. And she never saw him smoke from that day forward. Now, Mr. Maddox's other coworkers say the same thing, that he stopped smoking without any assistance. And they never saw him smoke again.

Judith McGoldrick testified that when he chose to stop smoking he did so without any assistance.

She was asked at her deposition: Did you ever hear Mr. Maddox use the term "cold turkey"?

Yes.

In what context?

Quitting smoking.

Did you ever learn whether or not Mr. Maddox had quit smoking?

Yes.

And after he stopped did you ever see him sell any cigarettes?

No.

After he stopped did you ever see him

purchasing any cigarettes?

No, sir.

After he stopped did you ever see him carrying a pack of cigarettes in his pocket?

No, sir.

After he stopped did you ever see him smoking?

No, sir.

We have water. And I get dry talking. If any of you get dry, please raise your hand and

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we'll see that you get a glass of water.
What all of this boils down to is that all of the people Mr. Maddox worked with for many years at Winn-Dixie have testified that Mr. Maddox first knew the health risks of smoking, and, second, that he was able to stop smoking when he decided to. No one else says anything different except the family members.
At the outset of his remarks, Mr. Wilner suggested that Mr. Maddox, just as he should have, took personal responsibility for his decision to smoke, but Mr. Wilner's words are empty. Despite what he said, Mr. Wilner spent most of his time trying to get you to ignore the decision Mr. Maddox made. Though paying lip service to Mr. Maddox's

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sense of personal responsibility, Mr. Wilner didn't do anything other than say that Mr. Maddox didn't get an adequate warning.
Why are plaintiffs presenting you with a picture of Mr. Maddox that is so at odds with reality? Why do they want you to believe that Mr. Maddox was frail, weak, helpless and uninformed?
Because they want you to believe that he couldn't think for himself or decide for himself what to do, and that's because if Mr. Maddox was aware of the potential risks associated with smoking, then his family doesn't have a right to their money they're suing for.
MR. WILNER: We'd object to that as an incorrect statement of law.
MR. NYHAN: Your Honor, I'm going to move on.
THE COURT: All right. I'll sustain the objection as a statement of the law but --
MR. NYHAN: But there was quite a bit of discussion of the law in the verdict form here.
THE COURT: Counsel, approach the side bar.
(Side-bar conference held outside the

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hearing of the jury)
THE COURT: I don't want speaking objections from either one you. I realize you felt compelled to reply because of what he said. If you want to object, put anything on the record, fine, but I don't want speaking objections from either one of you.
The problem that I have -- that's what I'm talking about now. We have a problem because, while it isn't a statement of law, I don't think that's the only theory upon which they're relying. So, you see, if they don't get that, then they can't win. And I don't think that's a complete statement of law, is what I'm talking about, not that it's incorrect as far as it goes. Okay.
MR. NYHAN: You know, he went into reading the jury form as a comparative negligence argument that's not in the case. He argued apportionment of damages.
THE COURT: I sustained the objection only because it was directed at that one statement.

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I'm not -- you know, either of you have objected to the general nature of your opening statements. I almost feel like I need to get the instructions and turn the case over to them at the end of the

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opening statements, but I don't have a problem. I'm not going to insinuate myself into it if you do not object. So that's fine.

And I think you need to answer what he said. I have no problem with that. I don't think Mr. Wilner does, but that statement, if they don't prove that, they don't win, the case is beyond just that simple statement, is what I'm saying.

(Side-bar conference concluded)

THE COURT: All right, Mr. Nyhan.

MR. NYHAN: Thank you, Your Honor. A manufacturer doesn't have to warn customers about risks they already know about. Motorcycle companies, for example, don't have to warn customers that motorcycles could be dangerous. If you know about a risk and you buy a product anyhow, you can't turn around and sue the manufacturer. That's what the plaintiffs and their lawyer are trying to convince you, that Mr. Maddox was just about the only person in America who hadn't heard there might be health risks associated with smoking. They have to carry their burden of proof in order to prevail if they're going to recover.

One of the choices you're going to get on the verdict form that Mr. Maddox -- or that

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Mr. Wilner described, is to find against the plaintiff if they don't carry their burden of proof.

As Mr. Wilner indicated, since 1966 the warnings on cigarette packages have been approved by congress. And as Mr. Wilner also admitted, there can be no claim that after 1969 Mr. Maddox failed to get an adequate warning on the package. Those warnings have been on every package sold since 1966. And since 1969 no other warnings have been required, but well before 1966, in fact, for his whole life, Mr. Maddox was aware that if he chose to smoke, he might be taking a health risk.

You're going to see abundant evidence that throughout the 1940s, the 1950s and the 1960s the message that smoking could be dangerous to your health was widely publicized. Let me give you some examples of what I mean.

You've heard about the testimony from Mr. Maddox's coworkers that he called cigarettes cancer sticks. The evidence is going to be that those terms have been widely used for at least 100 years.

In the 1950s just about everyone had heard that smoking might cause cancer. In the

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early '50s people at the Gallop Poll organization, which is one of the most highly-respected research groups in the United States, they went out and they asked people just like Mr. Maddox if they had heard that smoking might cause cancer. Ninety percent of the American public in 1954 said that they had

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heard or read that smoking might cause lung cancer, 90 percent.

Around the same time the Surgeon General testified before congress regarding smoking and cancer.

He was asked: Are you sure that you're doing everything possible to warn the public about the risks of smoking?

He responded: The media was doing a great job publicizing information about smoking and health risks.

That's from the Surgeon General back in the 1950s.

In 1964 stories regarding a possible link between smoking and lung cancer were everywhere. The U.S. Surgeon General, the American Cancer Society, the American Lung Association, the American Heart Association and virtually the entire public health service were telling the American

public that smoking was bad for you and it might cause cancer.

(Change of reporter, 11:45 a.m.)

MR. NYHAN: In 1964, the executive vice president of the American Medical Association said the health hazards of excessive smoking have been well publicized for more than 10 years and are common knowledge.

One of the plaintiff's own experts in this case was on the witness list that you saw in the juror questionnaire has testified that the 1964 Surgeon General's report on smoking and health -- that was the first report that the Surgeon General issued -- was the largest news story on health issues in the country. And this same plaintiff's expert agrees that there has been massive publicity on this subject for at least 30 years.

Even antismoking health experts acknowledge that people like Mr. Maddox knew the risks of smoking. The director of the U.S.

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Government's National Clearing House for Smoking and Health, Dr. Daniel Horn said, in 1968 -- the National Clearing House for Smoking and Health, those are the people that are responsible for drafting the Surgeon General's report.

And Dr. Daniel Horn, who was the head of that organization, he said you could stand on a rooftop and shout "Smoking is dangerous" at the top

of your lungs, and you wouldn't be telling anyone anything they didn't already know.

Just like today. Consumers in the 1940s, the '50s and the '60s understood that smoking poses health risks. Yet Mr. Wilner wants you to believe that Mr. Maddox is the only person who lived through the '50s and the '60s without getting the message. And his wife and daughter, in order to collect some money from my client, are willing to say that this perfectly intelligent man didn't know what every American knew.

Moreover, the family's version of Mr. Maddox's knowledge about smoking is specifically contradicted by all of the people he worked with. And it is, as I'm now going to explain, also contradicted by his own actions.

What do I mean by that? Back in 1963, Mr. Maddox told you that -- Mrs. Maddox says that her doctor told her to stop smoking. She stopped immediately. She also says that her doctor told Mr. Maddox that he should smoke outside on the porch, and that's what he always did. Is that the action of a man who thinks that smoking is harmless?

Twenty years later, his daughter says that

her doctor told her to stop smoking. She stopped immediately, too. Mr. Maddox knew that. But Mr. Wilner wants you to believe that Mr. Maddox was so ignorant that even after his wife and daughter stopped smoking, apparently at their daughter's (sic) instructions, Mr. Maddox never imagined that there might be a link between smoking and health.

Here's something else you need to know. While Mr. Wilner wants you to believe that Mr. Maddox pretty much always smoked Lucky Strikes, the evidence shows otherwise. I mentioned Mr. Maddox worked at Winn-Dixie for 20 years -- close to 20 years. The people he worked with there tell us that in 1985, Mr. Maddox switched to Marlboro Lights, a filtered, low-tar cigarette, not even made by my client.

He knew there might be a health risk associated with smoking, but he took pleasure in smoking. What are Mrs. -- his coworkers tell us? Karen Poole. "Do you know what brand of cigarettes he started smoking?"

"When I knew him, he was smoking Marlboro

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Lights." She's the one that would smoke with him out in front of the store on the bench.

"Did you ever see him with any other

brand of cigarettes?"

"No."

"During the time he was smoking, did he always carry his cigarettes in his shirt pocket?"

"Yes."

"And every time you saw him, did you notice what brand of cigarettes he had in his shirt pocket?"

"Marlboro Lights, yes."

Another worker, Judith McGoldrick. We mentioned her earlier. She was asked "Do you remember what brand of cigarettes Mr. Maddox smoked?"

"Marlboro Lights."

"Did you ever know him to smoke anything other than Marlboro Lights?"

"No, sir."

"Did you ever see him smoke a brand of cigarette described as Lucky Strikes?"

"No, sir."

"How frequently did you observe Mr. Maddox buying cigarettes over the years?"

"He bought a pack of cigarettes just about every afternoon before he went home. I saw him do that, probably, four to five times a week."

"Do you recall what brand Mr. Maddox was buying?"

"Marlboro."

Winn-Dixie has a rule: A worker cannot purchase goods himself. You have to buy it from someone else and you have to do it when you're on a break or after your shift is over. Ms. McGoldrick was the person who sold Mr. Maddox his cigarettes at Winn-Dixie.

No one that worked with Mr. Maddox ever saw him buy or smoke Lucky Strikes. The only witnesses who claim to have seen Mr. Maddox smoke Lucky Strikes after 1985 and for the next nine years are the plaintiffs, his wife and daughter, the people who are suing for money.

We asked them to tell us at their depositions who Mr. Maddox's friends were so that we could verify the family's claim that he smoked Lucky Strikes -- only Lucky Strikes. Mrs. Maddox and Mrs. Widdick claim that Mr. Maddox didn't have a single friend. Mrs. Maddox was asked, "He didn't have any friends at all?"

"No."

"Anywhere?"

"No."

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"At any time?"
"No."
Mrs. Widdick was asked, "Did he ever keep any close friends over the course of his life?"
"No."
"How do you explain the fact that he didn't have any friends?"
"He just didn't have friends." They said that Mr. Maddox, according to the people that he worked with, was a friendly and personable man, the kind of man who liked to read the newspaper and discuss current events with them. They say he had no friends at all.
Why won't the plaintiffs reveal who Mr. Maddox's friends were? Because they're afraid those friends might tell you what Mr. Maddox's fellow workers will tell you -- that he was well aware of the risks of smoking; that he had no difficult stopping once he chose to; and that he smoked other brands of cigarettes not made by my clients, the American Tobacco Company, the company the plaintiffs are suing. They're afraid Mr. Maddox's friends will tell you that he smoked Marlboros, who are made by another company.
Now Mr. Wilner has told you about other

warnings that should have appeared on cigarette packages, and there's no doubt you'll hear about long and complicated warnings that Mr. Wilner and the expert, Dr. Feingold, who has described these other warnings, are going to talk about -- there's no doubt those warnings are long and complicated.
But they don't provide much new information. Plaintiffs aren't really complaining about the substance of warnings that the United States requires. They just think they should have been more elaborate with more pictures and diagrams.
But would those warnings have told Mr. Maddox anything he didn't already know? There is certainly no reason to believe that Mr. Maddox couldn't understand the warnings that have been on the packets since 1969. He could read. He wasn't illiterate. He didn't need pictures to let him know what was going on.
Is it at all likely that any other warnings proposed by Mr. Wilner would have caused Mr. Maddox to stop smoking when, in 1963, his wife was advised to stop smoking yet he continued to smoke? At least in the 1970s he called cigarettes cancer sticks and coffin nails, yet he continued to smoke. And in the early 1980s, his daughter was

advised to stop smoking, yet he continued to smoke.
The simple fact is that no matter how loudly or how often we're told that something is bad

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for us, that doesn't ensure that we won't do it. Despite all sorts of warnings and despite knowing of the risks, sometimes we just choose to do risky things. Some of us don't buckle our seat belts every time we drive. Some of us eat a lot of unhealthy foods and snacks and don't get enough exercise. Some of us choose to smoke.

The bottom line is that what Mr. Wilner has to say about warnings is just a red herring. Mr. Maddox smoked not because the warnings were inadequate and not because he was unaware of the possible risks. He chose to smoke because he liked it.

Now Mr. Wilner spent so much time on addiction, I want to spend a moment setting the record straight on that. Addiction is a word that is used pretty broadly today. It no longer means a person is powerless to change.

We now say that people are addicted to eating chocolates. Mr. Wilner referred to running. In that sense, I won't quibble with Mr. Wilner's assertion that Mr. Maddox was addicted to

cigarettes, but only in that sense.

Mr. Wilner and his experts have something else in mind when they talk about addiction. For them, addiction is a way of explaining behavior that they disapprove of. When you hear an expert start labeling somebody else's perfectly normal behavior as an addiction, that means that the expert believes that the only reason that person refuses to do what the expert thinks is best is because the person must be powerless to change whatever it is they're doing.

Let me be more precise. Experts have decided that smoking is bad for people. They've told everybody to stop. And when some people refuse to stop, the experts have decided that the people who continue to smoke must be addicted. The fact that 50 million Americans have stopped smoking doesn't deter these experts from calling smoking an addiction.

Never does it cross their minds that people might decide for themselves what they want to do. Never does it cross their highly educated minds that people still have a right to make a choice, that ignoring the experts doesn't make Mr. Maddox an addict.

So when you hear Mr. Wilner and his experts use the word "addiction," think of it as a code word for someone like Mr. Maddox choosing not to do what the experts think he should be doing.

Now, I hope I've made it clear that despite Mr. Wilner's attempts to turn this trial into a referendum on the tobacco industry, it's really a quite simple case about a man who knew the

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health risks of smoking, who chose to smoke for some 48 years and who stopped smoking when he chose to do that.

In the hope of preventing you from seeing this simple set of facts, Mr. Wilner has tried to distract and mislead you by bringing up a lot of issues that are off the point. During the course of this trial, you'll see evidence to prove that he's wrong on every one of these issues.

But for the time being, I'm just going to spend a moment responding to these points of distraction that Mr. Wilner has raised. And by these points of distraction, I mean the following: Advertising; the research sponsored by the tobacco industry; the laboratory experiments he referred to; the mischaracterization of my client's position on smoking and health; the mischaracterization of

cigarettes; and the mischaracterization of documents.

First advertising. Mr. Wilner says Mr. Maddox was unable to make a free and informed choice about smoking. Cigarette companies advertise. He showed you some ads. But we know that ads can't make people do what they don't want to do.

If ads did that, then everyone would drink new Coke. Everyone would buy tires at places like Allied Tire, and everybody would smoke. But they don't. Individuals aren't so gullible or easily persuaded that they respond to every commercial they see.

Yet Mr. Maddox's family would have you somehow believe that he was enslaved by Lucky Strikes and Lucky Strikes ads and that he was incapable of not following the urgency of those ads to buy Lucky Strikes. That simply isn't true.

Mr. Maddox started smoking Lucky Strikes when he was 19 years old on the encouragement of Mrs. Maddox, who's now here suing for money. He was smoking Chesterfields at the time Mrs. Maddox met him and offered him the Lucky Strike she was smoking. He began Lucky Strike smoking then, not

because of any ads.

He continued to smoke Luckys because he liked them, not because of any ads. I want to talk briefly about the Tobacco Institute Research Council, what Mr. Wilner referred to as TIRC that was later known as the Counsel for Tobacco Research. Far from being any kind of a secret propaganda program, as he would want you to believe, the company's sponsorship of the TIRC was completely out in the open.

He put up the statement, the Frank statement, that companies did spend what they were going to do over the years. The TIRC and its

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successor organization spent over $200 million on research at highly respected institutions such as the Harvard Medical School, the Mayo Clinic and here, in the state of Florida, at the University of Florida, Florida State University, the University of Miami and the University of South Florida Medical School.

The results of this research funded by the TIRC and its successor was and is routinely printed in prestigious medical journals like Lancet, the New England Journal of Medicine, the Journal of American Medical Association and the publication of the

National Academy of Sciences.

In fact, although Mr. Wilner made a point of not telling you this, the U.S. Surgeon General's reports have cited over 300 different research projects sponsored by the TIRC and its LATER organization. Several of those research projects have been conducted by Nobel Prize winning scientists.

One of these scientists who's a Nobel Prize winner, is now the director of the government's National Cancer Institute. This record couldn't have been achieved with anything less than a scientifically sound research program of great merit.

And when Mr. Wilner tries to tell you that the TIRC or the CTR was some kind of propaganda program, that isn't true. Mr. Wilner mentioned some experiments on animals that were undertaken in the 1950s, and he told you that my client, the American Tobacco Company, was wrong to question those experiments.

Let me explain a few thing about that. He put up the photo of the three mice with the black tar painted on their back. What he didn't tell you about those experiments, but what the evidence will

show, is that those mice were painted with an amount of tar that would be the equivalent of a person smoking 600,000 cigarettes a day for 64 years.

When the amount of tar painted on those mice was cut in half -- in other words, the equivalent of 300,000 cigarettes a day for 64 years -- nothing happened. Tumors didn't form.

The mice used in that experiment had been specially bred to develop tumors that were medical research -- specially bred to help medical researchers produce tumors.

Third, when the same tar was painted on a different breed of mice, a breed that wasn't specifically bred to develop tumors, nothing happened. So don't let Mr. Wilner mislead you. There were many good reasons why my clients, the American Tobacco Company, criticized these mice experiments when they came out.

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They're the same reasons why many important scientists who had nothing to do with the tobacco industry also criticized the experiment. The experiments simply didn't produce or prove that it causes lung cancer in people or in mice. That's not my claim. That is the claim, the statement made by the United States Surgeon General in 1982.

The Surgeon General questioned the results of animal experiments that set out to prove that smoking caused lung cancer. The Surgeon General in 1982, C. Everette Koop has acknowledged that laboratory experiments have failed to prove that smoking causes lung cancer.

Attempts to reduce significant amounts of bronchogenic carcinoma in laboratory animals were negative in spite of major efforts with several species and strains.

The fourth point of distraction in Mr. Wilner's remarks to you was his mischaracterization of my client's position on smoking and health. Contrary to what Mr. Wilner told you, American Tobacco Company does not believe that cigarettes are risk-free. Cigarettes, like motorcycles, microwave ovens and other products in our free society have risks associated with them.

These risks are well known and they've been common knowledge for many years. We don't agree, however, that just because smoking is risky and just because Mr. Maddox happens to be a smoker who got lung cancer, that automatically means that smoking was the cause of his illness.

To hear Mr. Wilner speak, you'd think that

the causes of cancer were as straightforward and as well-understood as the causes of chicken pox or measles. Unfortunately, nothing can be further from the truth.

What the evidence will show and what even plaintiff's own experts will admit is that science simply doesn't know all of the causes of lung cancer. Some people who have never smoked develop lung cancer and not one of plaintiff's experts will say that whatever it is that causes lung cancer in these nonsmokers isn't also the cause of lung cancer in smokers.

Not one of plaintiff's experts will say that if nobody smoked, nobody would get lung cancer. The fact is, lung cancer looks the same under a microscope in nonsmokers or smokers. There's simply no way to know if Mr. Maddox got lung cancer from smoking.

Now what science does know is that many risk factors besides smoking appear to play a part in determining whether someone will get cancer. Factors such as genetics, diet and other lifestyle choices.

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Also in Mr. Maddox's case, his daughter Peggy was deposed and so was Mr. Gladstone that was

married to her. Mr. Gladstone testified that she questioned her father's exposure to radiation when he was in the Army. That's not the daughter that's bringing the lawsuit.

Mr. Wilner would have you believe that smoking is the only reason why anybody gets lung cancer and the only possible reason for why Mr. Maddox did. But then why is it that every year, thousands of people who get lung cancer never smoked? And why is it that most of the people who do smoke never got lung cancer? And why is it that in Japan, which has the highest rate of smoking in the world, has a much lower rate of lung cancer than here in the U.S.?

(Change of reporters, 12:05 p.m.)

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Even if Mr. Wilner and the Maddox family truly believed that Mr. Maddox's lung cancer was caused by smoking, and even if they insist in the face of what all of the people he worked with say, that he only smoked or mostly smoked Lucky Strikes, they simply cannot say that his cancer was caused by a failure to warn.

Every package of cigarettes he smoked for 27 years contained a warning, and he was aware of those warnings. Moreover, as you're going to hear in this trial, had Mr. Maddox stopped smoking in 1969, when warnings first appeared on cigarette packs, instead of in 1994 after he had been smoking for some 48 years, had he stopped in '69, his risk of lung cancer would have been just about the same as somebody who never smoked.

Now, Mr. Wilner put up a board over here showing the warnings that have appeared on cigarette packages. He didn't read to you one of the warnings that was put up in 19 -- that's been on cigarette packages since 1985. That warning said, "Quitting now significantly reduces risk of serious disease." Had Mr. Maddox stopped smoking when that warning first appeared, he also would have reduced his risk of lung cancer.

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According to the plaintiff's own expert, had Mr. Maddox quit even in 1985 when that warning came out, his risk of getting lung cancer would have been much lower. But Mr. Maddox ignored that warning, just as he chose not to heed all of the other warnings about the health risks associated with cigarette smoking.

The bottom line here is that Mr. Maddox liked to smoke and he made a personal choice to do, despite what he knew to be the health risks of smoking.

Now, Mr. Wilner says that the tobacco company should have developed a safer cigarette. Mr. Wilner's own expert in cigarette design, Dr. Farone, another one of those names that was on this list of witnesses that you were asked to check off on the juror questionnaire, he'll testify that the U.S. tobacco companies have invested an enormous amount of money, an enormous amount of scientific talent and resources in cigarette design and in smoking and health research.

Over the past 40 years have been significant innovations in cigarette design, innovations that have led to decreases in tar and nicotine. Fifty years ago the average tar and

nicotine levels in cigarettes were much higher than they are today. In fact, cigarettes today have much lower tar and nicotine than the content found in the tobacco leaf when it comes out of the field.

Dr. Farone, another plaintiff's expert, he'll testify that Carlton, which was made by the American Tobacco Company, which is now made by Brown & Williamson, was one of the first ultra low tar cigarettes to come out on the market. Dr. Farone considers Carlton to be one of the safest brands on the market, and he recommends Carlton to everyone who chooses to smoke, even those in his own family.

Carlton is sold everywhere, everywhere Mr. Maddox bought cigarettes. However, Mr. Maddox, like most smokers, didn't chose to smoke this lowest tar cigarettes.

How do we know that? Mr. Maddox's former son-in-law, Gene Gladstone, testified that in the late 1970's and the early 1980's, when Mr. Maddox bummed filter tipped cigarettes from Mr. Gladstone, Mr. Maddox would take the filter tipped cigarette and he'd snap the filter off and he would smoke it without a filter -- without the filter. He called the filters "mufflers." And he didn't smoke filter tip cigarettes because he thought they ruined the

taste of tobacco, yet Mr. Wilner wants you to blame the company for cooperating with the government in an effort to produce a safer cigarette, as if Mr. Maddox, who wouldn't smoke Carltons and refused to

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smoke filter tips until 1985, would have smoked the type of cigarette that Mr. Wilner says we should have been producing all along.

The companies develop these alternative products with different tar and nicotine levels in response to the urgings of the government. The government suggested that these products be made available. Companies did. And Mr. Wilner would have you believe that Mr. Maddox would have smoked them. He didn't. Mr. Wilner suggests the defendants haven't marketed a safer cigarette because it would be an admission that other cigarettes aren't safe. If that were true, then cigarette makers would never have marketed low tar, low nicotine brands.

But, of course, they have. Most smokers simply don't purchase products with little or no nicotine. They complain, like Mr. Maddox did, that the products have no taste. Just like many people who enjoy desserts don't enjoy and don't buy low fat, low calorie substitutes.

And it's also not true that smokers only smoke for nicotine. If they did, then nicotine patches would have put the tobacco companies out of business.

Smokers aren't addicts. They're not fools. They're people who enjoy smoking and who have made a decision to do so.

The final means by which Mr. Wilner has tried to distract you is by referring to documents that he mischaracterized and documents that have nothing to do with Mr. Maddox or with the case we're here to decide. Before turning to those documents, I'd like to take a moment to explain something that Mr. Wilner would like you to not understand very well, and that's the relationship between my client, the American Tobacco Company, and Brown & Williamson Tobacco Corporation.

For over 68 years the American Tobacco Company and Brown & Williamson were competitors, each fighting for their share of the market. Then in 1995, like so many companies now are doing, these two competitors merged. After the merger, they kept the name, the Brown & Williamson Tobacco Corporation. Today what was the American Tobacco Company is part of Brown & Williamson Tobacco

Corporation.

But make no mistake. Until 1995, when they merged, the two companies were separate. They competed with each other, just like 7-Up used to compete with Dr. Pepper until they merged in the 1980's. In other words, back in the 50's and the 60's and the 70's and the 80's, when Mr. Maddox may have been smoking Lucky Strikes, American and Brown & Williamson were competitors. They weren't

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partners.
Why is that important? He's already shown -- Mr. Wilner has already shown you some of the documents that he talked about that came from Brown & Williamson. They were written some 30 years before Brown & Williamson merged with the American Tobacco Company. Those documents weren't known to the American Tobacco Company who made Lucky Strikes.
Other documents Mr. Wilner showed you are from foreign companies, the Battelle Labs located in Germany. That faded nicotine document is from researchers in Europe. Those companies had nothing to do with Mr. Maddox or with the American Tobacco Company's cigarettes.
Even if they had sold cigarettes in the

United States, those companies would have been competitors of the American Tobacco Company and they certainly wouldn't have allowed American Tobacco Company access to their internal documents and their files any more than Apple Computer would allow IBM to go through their files.
And before I finish, and we're getting there, I want to tell you a little bit about the witness plaintiff's rely upon to support many of their claims. His name is Dr. Feingold. He was one of those witnesses listed on the juror questionnaire, and he's been testifying for Mr. Wilner since the early 1980's.
There's several things you should know about Dr. Feingold. The first is that he's been paid more than 3 million dollars over the last ten years to testify for Mr. Wilner and other lawyers. Secondly, in making that 3 million dollars, Dr. Feingold has claimed to be an expert in over 20 different fields, and not just medical fields. In addition to claiming to be an expert in the medical arena, Dr. Feingold also claims to be an expert on advertising, business history, consumer behavior, among many other things.
Third, even as a supposed expert in

medical science, there's some big holes in Dr. Feingold's knowledge. For example, he's never done any scientific research into lung cancer. He's never done any original research in any aspect of the cause of cancer and, most importantly, he's never done any original medical research on his own.
Fourth, when you hear Dr. Feingold testify, please keep in mind that he never met Mr. Maddox, much less examined him, and he's never so much as spoken with any members of Mr. Maddox's family. In other words, Dr. Feingold has no firsthand knowledge of Mr. Maddox, and not even secondhand knowledge that Mr. Maddox's family might

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have provided. Instead, the only things that Dr. Feingold knows about Mr. Maddox are what Mr. Wilner has told him. Mr. Wilner is the source of all of Dr. Feingold's knowledge about Mr. Maddox.

Finally, you should know that in the course of earning that 3 million dollars Dr. Feingold hasn't always been consistent in his testimony, particularly on the subject of addiction about which you heard quite a bit from Mr. Wilner. For example, in 1993 when he was testifying for Mr. Wilner, who was then defending an asbestos

company, Dr. Feingold testified that cigarette smoking is not addictive. But now that Mr. Wilner is suing tobacco companies, Dr. Feingold testifies that cigarette smoking is addictive.

When helping Mr. Wilner defend asbestos companies, he said that smoking is not addictive. And now he testifies, when helping Mr. Wilner sue tobacco companies, that smoking is addictive. You'll be the judge as to why he changed his opinion.

Now, in closing, I want to thank you for your attention. I apologize for us running into the noon hour. We got a late start. And, please, I hope the Judge will give you a longer time to come back. I do appreciate your attention.

And I want to remind you about what I believe the three most important facts that the evidence are going to show in this case are. First, Mr. Maddox was well aware of the health risks of smoking. We know this for two reasons: he discussed them and he even joked about them with his son-in-law back in the early 1970's and with his co-workers and the customers for whom he sold cigarettes at Winn-Dixie for so many years.

And, quite simply, everyone in

Mr. Maddox's generation was aware that health risks might be associated with cigarette smoking. Mr. Maddox chose to put the pleasure of smoking ahead of the risks. He was not inadequately warned and he was not ignorant of the warnings.

Second point, after 1985 Mr. Maddox didn't smoke Lucky Strikes and, for that matter, any cigarette manufactured by the American Tobacco Company. He smoked Marlboro Lights, a brand of cigarettes made by another company, a competitor of the American Tobacco Company and a company that is not being sued here. There isn't one shred of evidence that Mr. Maddox smoked my client's cigarettes after 1985, only the testimony of the people who are suing, and that testimony is contradicted by all of Mr. Maddox's coworkers.

Thirdly, Mr. Maddox had no difficulty stopping smoking when he chose to. We know this from the testimony of all of the people he worked

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with, and we also know this as well from the records of the several doctors he saw in 1994. Mr. Maddox chose to smoke; however, along with choice goes responsibility for the consequences of those choices.

Mr. Maddox's family is now trying to shift

responsibility to my client for the choice he made. We have compassion and sympathy for Mr. Maddox's family, but we cannot allow them to rewrite history.

Mr. Maddox was not ill informed. He wasn't frail or weak or ignorant, as the plaintiff's lawyer wants you to believe. Mr. Maddox understood the risks he was taking when he chose to smoke. That choice was his right, and his family isn't entitled to money because they now believe he made the wrong choice.

Mr. Wilner described the verdict form. When you get to see the verdict form, we are going to ask you to return a verdict against the plaintiff.

Thank you.

THE COURT: Would counsel approach the side bar, please?

(Side-bar, Court and counsel).

THE COURT: Ladies and gentlemen, obviously we're going to break for lunch in just a minute. I noticed some of you using the note pads. You're welcome to write down anything you want or choose, but I will tell you, in case it hasn't been clear to you, all of the physical documents which go

into evidence will be sent back in the jury room with you, so you don't have to write dates and that sort of thing down. You can write whatever you choose down, but you will have all of the physical documents in the jury room when you decide the case.

Again, please do not discuss the case among yourselves nor with anyone else, and we're going to take a little longer lunch hour today than we probably will in the future, but I'm asking you to come back at 2:00 because we're going to finish early today and the attorneys and I are going to do some work, so we're going to let you go early today.

Please do not discuss the case with anyone. Be back in the jury room at 2:00. We will start right at 2:00.

(The proceedings were adjourned for lunch at 12:30 p.m., to be reconvened at 2:00 p.m.)

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IN THE CIRCUIT COURT, FOURTH JUDICIAL CIRCUIT, IN AND FOR DUVAL COUNTY, FLORIDA
CASE NO.: 97-03522-CA
DIVISION: CV-H

ANGELA B. WIDDICK, as Personal Representative of the Estate of ROLAND E. MADDOX, deceased,
Plaintiff,
vs.
BROWN & WILLIAMSON TOBACCO CORPORATION, a foreign corporation; LIGGETT GROUP, INC., a foreign corporation; and WINN-DIXIE STORES, INC., a Florida corporation,
Defendants.

AFTERNOON SESSION
Wednesday, May 13, 1998

VOL III

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AFTERNOON SESSION
Wednesday, May 13, 1998 2:00 p.m.

(Present for this hearing in chambers are: John Nyhan, Norwood S. Wilner, and Floyd Matthews.)

THE COURT: All right go on the record. Come on in Floyd.

MR. MATTHEWS: I was just going to see if we were going to take up Sprinkle and Lougee depos beforehand. I didn't know what John was going to do.

THE COURT: I was told during lunch that we were going to go back in the courtroom at two o'clock, okay. I asked you all to come around here in my chambers because the media --

MR. WILNER: Floyd, you can stay.

THE COURT: -- was not there -- was not here, but I got a call, a note when I came back from the courtroom recessing at lunchtime. From my judicial assistant she had typed out that Mike Riley, who is in charge of the jury pool, called and he received a phone call from a juror that was on the panel yesterday that was not selected; that he or she read in the paper this morning that the jurors were not to be told of the Liggett settlement.

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He or she said that at about 1:30 p.m. yesterday in front of Courtroom No. 2 an ABC reporter was on her cellular phone reporting about the Liggett settlement and was talking loud enough that everyone in the hall, including all of the jurors heard her. In short, they do know about the Liggett settlement.

I'm going to take some precautions about doing that -- but we are typing up an order now about the media. And there is a place, a room for them to use, and I'm going to impress upon Mr. Beasley -- I don't think I need to announce that in open court, but Mr. Beasley to make sure that if they're using their phones, that they use it in that room. And if they interview any of you all, I have determined that -- I don't have a problem with you interviewing in the room, out in the halls, if you don't want to do that. If it gets out of hand, I may put a gag order out on talking about it, but right now I'm not about to do that.

MR. WILNER: I think that as long as we're not -- the halls are terrible because the jurors see it. I don't like it either. I think that as long as we're out of sight, that that's the best control.

THE COURT: Well, we have not had a

problem in the past because they've worked it out and the media have been very cooperative, and I'm sure that this ABC reporter didn't realize that the jurors were walking by.

I almost said something in front of the jurors because one of the JA's said something to me, and I saw the juror right behind me, and I said I can't talk about it. But it is easy to make a slip. That is what I am talking about.

MR. NYHAN: Well, Judge, but we had some -- I tried to get some language, maybe a proposed instruction that -- a caution on this issue, and I had it this morning, but I left it in my bag.

MR. WILNER: That's fine. That's fine. Okay, so we're going to run the videotape first.

THE COURT: I may give it, you know, depending on what it says.

MR. NYHAN: Yes. Well, I forgot to bring it with me.

MR. WILNER: All right.

THE COURT: Are you all ready to start the -- are you ready to start?

MR. WILNER: If the machine is working. I didn't get a chance -- I think it is, but I --

THE COURT: All right. Do you want to go

ahead and invoke the rule on the record or does any of either side want to invoke the rule?

MR. WILNER: I don't care.

MR. NYHAN: I don't care.

THE COURT: We've got the record here.

MR. WILNER: It doesn't matter to me.

THE COURT: It doesn't matter?

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MR. WILNER: Doesn't matter to me.
THE COURT: Witnesses can come in and out of the courtroom?
MR. NYHAN: So far that's fine.
THE COURT: That is fine.
MR. NYHAN: As long as you're not going to sandbag.
THE COURT: Yes, until the defendant presents his case, right?
(The proceedings continued in the courtroom as follows:)
THE BAILIFF: This court is back in session. Please be seated.
THE COURT: Are we ready to proceed, Mr. Wilner?
MR. WILNER: Yes, Your Honor.
THE COURT: Are you ready to proceed, Mr. Nyhan?

MR. NYHAN: Yes, Your Honor, we are.
THE COURT: Bring them in, please, Mr. Backer.
(Jury enters courtroom)
(Proceedings resume, jury present)
THE COURT: Good afternoon, ladies and gentlemen.
Mr. Wilner, call your first witness.
MR. WILNER: Your Honor, as our first witness the Maddox family calls a machine, a videotaped deposition of Mr. Robert K. Heimann, of an official with American Tobacco and request that Your Honor give the instruction. Thank you.
THE COURT: Ladies and gentlemen, what Mr. Wilner is doing is presenting a deposition that is a video deposition.
A deposition is merely a statement given under oath sometime before the trial, and you will be told when and where the deposition was taken. You are to treat this testimony just as if the witness were sitting on the witness stand today answering the questions that were asked of him at that time.
It is to be given no more weight nor any less weight than if he were sitting here today. So

with that, call your first witness.
MR. WILNER: All right.
(The videotaped deposition of Robert K. Heimann was presented in the courtroom as follows:)
SPEAKER: Would you swear the witness, please.
THE COURT REPORTER: Mr. Heimann, would you raise your right hand, please.
(The witness was duly sworn)
EXAMINATION BY MR. RON DAVIES:
Q Mr. Heimann, would you state your full name.
A Robert K. Heimann.
Q What age then are you, sir?
A Sixty-eight.
Q And where do you reside?

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A In Riverside, Connecticut.
Q And what is your occupation?
A I am retired.
Q You are aware, of course, your deposition is being taken today for the purposes of being used in court proceedings that are now pending in Holmes County, Mississippi, do you not?
A Yes, I am aware of that.
Q And you have given a deposition before,

have you not?
A Yes, sir.
Q And, in fact, have testified in court for American Tobacco in the past?
A Yes, I have.
Q All right, sir. You understand then that your deposition and your testimony today is just as though you were in court testifying before the judge and jury?
A I do understand that.
Q You have been designated as a witness by American Tobacco Company in response to a request that they produce a witness that is familiar with various aspects of the company, and I want to go over the information which you possess very briefly this morning. But first I would like to ask you about your educational background.
What year did you graduate from college?
A 1948.
Q And what college did you go to, sir?
A Princeton.
Q And did you pursue your formal education beyond your initial college degree?
A Yes. I have an MA and a Ph.D from NYU.
Q All right. First of all, your master's.

What area was your master's degree obtained in?
A It was an analysis of movie scripts.
Q What type of analysis?
A Well, you'd call it, I suppose, sociology. That was the department I was working in.
Q And did you write a thesis to obtain your master's?
A Yes.
Q What was the name of your thesis?
A I can't remember the name of it.
Q Okay. It has been suggested to me and I will ask you, that it was entitled Themes Recurring in American Movies?
A Sounds about right.
Q And what was the gist of your study?
A The gist was an analysis of the way the crowd, the abstract crowd, the American populace was handled repetitively in various films.
Q All right. Now, you said you also obtained your Ph.D. That's a Doctor of Philosophy degree?
A Yes, sir.
Q And in what area was that degree obtained?

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A That was also in the field of sociology.
Q And in what year?
A '52.
Q All right, sir. Did you write a doctoral thesis in order to obtain that degree?
A I did.
Q And what was the subject of that thesis?
A This was a multivariate statistical analysis to test one of the postulates of Karl Marx with respect to the formation of antagonistic capitalist and labor groups.
Q You're referring to Karl Marx, the communist?
A Yes, I am.
Q And in what context did you study his works?
A Well, I just said what context. It's -- his postulate was that capitalists and labor groups were gradually strengthening in a kind of dialectic tension which would create two more and more hostile classes, and that was tested by an analysis over a 30-year period of membership in trade associations on the one hand and labor union membership on the other hand.
Q You stated you used a statistical anaysis?

A Yes.
Q What are you referring to?
A Well, we correlated over this 30-year period these membership figures which I gathered with the time factor and a measure of the strength of the economy year to year. I can't recall what that measure was.
Q This was, though, a statistical analysis you performed?
A Yes.
Q And was it based upon the statistical analysis that you were able to do your dissertation and obtain your doctorate degree?
A Yes.
Q Did your college education in any way study or examine the relationship between smoking and health?
A No.
Q Did your master's degree in any way study or examine the relationship between smoking and health?
A No.
Q Did your doctorate degree in any way examine the relationship between smoking and health?
A No.

Q Would it be fair to say that during your formal education you did not study in any manner the relationship between smoking and health?
A Yes.
Q Whatever information you had on smoking and health when you got your degrees would be the same as the man on the street in all probability?

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A That's a fair statement.
Q Okay. What year were you first employed by American Tobacco Company?
A 1954.
Q And how old a man were you at that time?
A Let's see. Born in 1918. Thirty-six. Thirty-six.
Q And what was your first assigned position with the American Tobacco Company?
A Executive assistant in the president's office.
Q Mr. Heimann, when you were first employed in 1954 would you very briefly describe what your position was with the company?
A As executive assistant, I was given assignments in the areas of stockholder relations, public relations, financial public relations.
Q All right, sir. For approximately how

many years were you in that position?
A Oh, half a dozen years plus or minus.
Q All right. That takes us up to about 1960 then or somewhere in that time frame?
A Somewhere in there.
Q What was the next position you had with American Tobacco?
A I was then promoted to assistant to the president.
Q Did your duties change in any way?
A Well, they did. I think I received more meaningful assignments gradually over a period of years in the same areas.
Q All right. What was your next assignment with American Tobacco?
A The next change was '63 or '64, and I was then made vice president of marketing.
Q And what do you describe now when you refer to vice president of marketing?
A Well, in charge of the sales function, the advertising function, the market research function and partially in charge of new product development.
Q In terms of the advertising of your company's products, is that all of the brands that your company made?

A Yes.
Q What was your next position?
A Next, about 1966, executive vice president, which covers all of the operations of the company with the exception of manufacture and leaf. And leaf, l-e-a-f.
Q And would that include marketing and public relations?
A Yes.
Q And what was your next position then with the company?
A Next was president and chief operating officer, and I can't think of the year.
Q Would that have been approximately 1973?
A '73 I was made chief executive officer at the death provider CEO, but I think I was made

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president and chief operating officer, which is a number two position in between somewhere.

Q All right, sir. When you were made president and chief executive officer, was the company name at that point American Tobacco Company?

A No, by that time we had taken the name American Brands, and the American Tobacco Company was a division within American Brands.

Q Would you give me a very brief history,

please, of the American Tobacco Company?

MR. EDMONSON: Would you clarify for the record, Mr. Heimann, when you were chief operating officer and when you were president and CEO.

THE WITNESS: Well, when I was president -- I do remember being made chief executive officer in 1973 on the death of my predecessor, Mr. Walker. And I said that prior to that time I think my title was changed from executive VP to president, but not chief executive officer. Does that clear it up?

MR. EDMONSON: All right. You had two positions; rather, it was not a combined position when you were president?

THE WITNESS: No. That is correct.

Q Where were your offices throughout this period of time?

A In New York City.

Q And what age man were you then when you assumed the presidency of American Tobacco?

A Well, let's see. 1973, less 18. That would make it 55, would it not?

Q All right, sir. Could you give us, please, a very brief history of the American Tobacco Company.

A Well, briefly, the origin of the company

goes back to Washington Duke, a Durham man who grew and granulated tobacco in Durham, and his son James Buchanan Duke moved the business to New York in the 1880's.

In the year 1890, I believe, it was named the American Tobacco Company and through a number of corporate changes and reorganizations and so on it was continued right on up from that point.

Q Let's go back to 1954. You are aware, of course, that between 1950 and 1954 there were articles appearing in magazines and newspapers and in the Readers Digest suggesting the link between smoking and lung cancer, were you not?

A Yes, sir.

Q I want to talk to you just a minute about the position of American Tobacco Company. At the time you first went to work for American Tobacco Company had they already taken a position that smoking, on smoking and health to the effect that cigarettes were not injurious to your health?

A Yes.

Q Had they taken that position?

A Yes.

Q And is that a position that they maintained throughout your employment with American

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Tobacco?
A Yes.
Q And then as far as you know, is that still their position today?
A I can't testify as to what their position is today. As I say, I have been out of touch since 1980.
Q All right. Would it be correct then from 1954 until 1980 it was American Tobacco's position that cigarettes are not injurious to your health?
A That is so.
Q At the time that position was formulated in 1954, based upon your information, who formulated that position for American Tobacco?
A The formulator and spokesman was the chief executive officer of the company, Mr. Paul Hahn.
Q I understand he was a lawyer?
A He had been, yes.
Q And do you understand further that he was a lawyer prior to being employed by American Tobacco Company with the same firm in whose offices we are this morning?
A That is true.
Q Was there any other person that you know of involved with Mr. Hahn in formulating that

position?
A Yes. I would answer your question in a broad way by saying that his position was based on the study of tobacco by our Richmond research laboratory, a study which began very early in the century.
The lab was founded in 1911, and from 1920 on engaged in an intensive study of the components of leaf tobacco and of tobacco smoke, and it was a very extensive library of scientific information gathered by the laboratory over those years on which Mr. Hahn's position was initially based.
Q Did a man name Alfred Boden also consult with Mr. Hahn about smoking?
A Yes.
Q And health issues?
A Yes.
Q Did he have a college education?
A No.
Q He was a high school graduate?
A I can't tell you exactly what education he had.
Q Would it be a correct statement that as far as you know the American Tobacco Company's official position was formulated by Mr. Hahn and

Mr. Boden and spoken by Mr. Hahn?
MR. EDMONSON: Mr. Heimann, you don't have to guess as to that answer if you don't know how that was formulated?
A Well, I am certain in my own mind, Counsel, that Mr. Hahn did most of the formulating, but you have mentioned some others, and I just

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hesitated because I didn't want to leave out Mr. Hamner, who was the director of research for the company, who was a very important figure in those deliberations.

Q Mr. Hamner is a chemist; is that correct?

A Yes.

Q He was not a medical doctor?

A No.

Q In fact, in 1954 when you went to work for American, they had no medical doctors involved in smoking and health, is that correct, that worked for the company?

A I think that is correct, yes.

Q All right, sir. Were part of your duties in working for American to explain American's position on smoking and health at different occasions and before different groups?

A Yes.

Q Did you also sit in on meetings with Mr. Hahn and Mr. Boden and Mr. Hamner concerning smoking and health issues?

A Yes.

Q Did you meet with personnel relations people, PR people, to discuss these issues?

A With our own public relations counsel. Is that what you are referring to?

Q Yes.

A Ivy Lee and T. J. Ross was in on some of those discussions, yes.

Q And did you also meet with advertising people and discuss smoking and health issues?

A No.

Q Just your personal relations people?

A Public relations I think we're talking about.

Q Public relations?

A Yes.

Q Did you and Mr. Hahn or any other personnel at American Tobacco ever sit down and discuss what American Tobacco would do if the allegations that were being published that smoking caused lung cancer were true?

A No.

Q Did you ever discuss the subject?

A No.

Q Did it ever occur to American Tobacco that at some point the conclusion would be established that smoking was hazardous to your health?

A No.

Q Did American Tobacco ever convene a group of doctors and get their opinion about the effects of smoking on health?

A We never convened a group of doctors, no.

Q Did you ever consult with the American Medical Association about those issues?

A Indirectly through representatives of the industry which supported research by the AMA in this area.

Q Okay. We'll discuss those efforts in just

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a moment, but my question at this point is, did you or anyone directly with American Tobacco ever consult with the American Medical Association that you were aware of?

A I did not. I can't answer for others in the company who may have consulted with the representatives of the AMA.

Q To your knowledge, did anyone at the president level ever consult with any professional

medical associations during the period of time that you were with American Tobacco to determine and ask them to determine if there were health hazards associated with smoking?

A Not that I know of.

Q I want to refer you to what has been marked as Plaintiff's Exhibit No. 1, and if we can, Mr. Heimann, I will put that in front of you so that the -- excuse me. Let counsel refer to that for a moment.

I want to refer you now to Plaintiff's Exhibit No. 1, which I am placing before you, Mr. Heimann, which is entitled "A Frank Statement to Cigarette Smokers," and I will ask you, sir, is this an advertisement that was placed in the New York Times by your former boss, Mr. Hahn, and I believe the date was what? January 4, 1954; is that accurate?

MR. EDMONSON: Is the question did Mr. Hahn place that ad in the paper?

Q I probably misstated it if that's what I said.

A Yes, you did. It was placed by the Tobacco Industry Research Committee, which Mr. Hahn had helped to organize and almost gave birth to

himself, and it was carried in the New York Times, yes.

Q All right, sir. This document shows Mr. Hahn as the president of American Tobacco was one of the originators of the Tobacco Industry Research Committee?

A Yes.

Q I have underlined in red a statement there. Would you read that statement, please, sir, if the writing is not too small?

A "We believe the products we make are not injurious to health."

Q Thank you. In 19-...

I am going to hand you what is marked as Plaintiff's Exhibit No. 2, which is a document entitled "Smoking and Health Report of the Advisory Committee of the Surgeon General of the Public Health Service."

You are familiar with that document, are you not, sir?

A Yes.

Q Were you aware that in 1957 a scientific study group was established by the National Cancer Institute, the National Heart Institute, the American Cancer Society and the American Heart

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Association to study the relationship of smoking and health?

A Yes.

Q Were you aware that that study appraised 16 independent studies in five countries over a period of some 18 years?

A I think I have already stated that while I remember the term "study group," when I was last asked about this, I said that I couldn't recall any of the details as to how they went about this study or what they said, and I think that still stands.

Q All right, sir. Were you aware that that study group did conclude there was a causal relationship between excessive smoking and lung cancer?

A I don't remember anything except the name of that group.

Q All right. Did you ever meet Dr. Lee Burney?

A No.

Q Do you know that in 1957 he was the Surgeon General of the United States?

A I remember his name, yes.

Q Did you see a statement which was published by Dr. Burney on July 12, 1957 that

stated, and I'm going to quote: "The Public Health Service feels the weight of the evidence is increasingly pointed in one direction that excessive smoking is one of the causative factors in lung cancer"? Close quote?

A Well, I can't tell you that I remember that quote. I remember Mr. Burney, and I think I recall that his position changed over a period of time.

Q Do you recall at one time, though, while you were with American Tobacco he did issue a statement that he -- it was his belief that smoking was causally related to lung cancer?

A He may have. He may have.

Q To your knowledge did American Tobacco convene any medical doctors to examine the validity of Dr. Burney's statement at any time?

A Well, beginning in late 1953 with the establishment of the TIRC, which later became CTR, Council for Tobacco Research, the -- one of the major efforts in that whole procedure was to put the question to responsible scientific authorities and medical authorities who were equipped to make judgments on the validity of the claims against cigarettes and also to institute sound objective

research into the question, and to disseminate of the findings of that research to the public.

Q Okay. I want to ask you the question, though, did American Tobacco ever convene a group of doctors to examine the validity of Dr. Burney's statement?

A Perhaps I did wander a little from your

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question, but I meant to say that questioning the validity of Dr. Burney's statment would then have been the function of the TIRC, not American Tobacco.

Q Were you aware on November 28th of 1959, Surgeon General Burney published an article in the Journal of the American Medical Association and stated, "Cigarette smoking particularly is associated with an increased chance of developing lung cancer"?

A Again, I can't vouch for the citation. I don't recall it specifically.

Q All right. Let's talk just a minute now about the Tobacco Industry Research Committee. You stated that that was something that the president of American Tobacco, Mr. Hahn, gave birth to, I believe in your words, back in 1954.

A (Witness nods head affirmatively.)

Q Did the Tobacco Industry Research

Committee have a research lab?

A No.

Q Did they have any research facilities in place?

A No, not that I ever heard.

Q It was simply an association, was it not?

A Well, it was an independent scientific body.

(Change of reporter, 2:30 p.m.)

Q Who were the members of it, if you know?

A Well, I can give you a few names out of recollection. Julius Comro, McKeen Kattell.

Q Can you identify those companies they represented?

A These are scientists, reknowned scientists who had no connection whatsoever with any tobacco company or tobacco commercial interest. And they served at the request of the tobacco industry, the members who are cited in that advertisement, who support sound objective research in the areas of smoking and health, wherever worthy research could be supported.

Q All right. They acted as an advisory board to review grant applications and approve grants to people out in different areas doing research?

A Exactly. Exactly.

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Q All right. Now you also, if I understand correctly, and by "you" I mean your company, also formed an association called the Tobacco Institute sometime in the '50's with the other tobacco manufacturers; is that accurate?
A That is true.
Q And was this a -- more of a lobbying branch of public relations arm of the industry?
A I think that's a fair statement.

Q Can you tell us how the Tobacco Institute and the Tobacco Industry Research Committee were financed?
A They were financed by the major cigarette companies. They drew up a budget, both groups once a year, and this was approved by the representative of the member companies and based in part on market share. Now, there was one exception. The Liggett Company did not participate at the outset in TIRC. I believe all the six major companies did participate at the outset in the Tobacco Institute.
Q To make sure I understand you then, your share of the budget would be determined by what share of the retailing market your products made up; is that accurate?
A That's right. That's accurate.
Q So if your company had -- and I am just using a figure -- if your company had 5 percent of the cigarette market, you would pay 5 percent of the Tobacco Institute's budget?
A That's the procedure.
Q And 5 percent of the Tobacco Industry Research Committee's budget?
A That's right.
Q Okay. Do I understand that American Tobacco withdrew from the Tobacco Institute in the mid-1960's?

A Yes, that is correct.
Q Did I understand that this was at a time when you were a vice president in charge of marketing?
A That would be so, yes.
Q And do I clearly understand correctly that one of the reasons you withdrew is that you didn't think the Tobacco Institute was aggressive enough in putting forward the message of your company on smoking and health issues?
A That's not precisely the reason. I testified earlier on this subject that even when the Tobacco Institute was first formed, we were not comfortable with it because we felt that the way the institute came into being and was set up could lead us into dangerous areas from the antitrust point of view. And, as you know, the industry had some antitrust difficulties in prior decades. So we were sensitive to that.
Q All right. Am I accurate though that one of the reasons you withdrew from the Tobacco Institute is because you didn't feel like they were aggressive enough on smoking and health issues?

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A Well, let me put it this way. If the Tobacco Institute had been a great success in that area, we might have overcome our other objections.
Q Okay. So I can say that they were successful

enough that you stayed with them?
A That's a fair statement.
Q All right, sir. In 1962, though, American Tobacco was still a member of the Tobacco Institute, correct?
A '62, I believe so, yes.
Q And it was in July of 1962 that Surgeon General Luther Terry met with certain medical associations and representatives from the Tobacco Institute to select an advisory committee to the Surgeon General to study smoking and health; is that correct?
A I can't vouch for the date, but it's --
Q In that time frame?
A In that time frame, that's true, yes.
Q The results of that advisory committee's work became the Surgeon General's Report on Smoking and Health in 1964; is that correct?
A I believe so.
Q And that's the document you have before you that's marked Plaintiff's Exhibit 2?
A Yes.
Q You were aware that the committee that was chosen to be the Advisory Committee to the Surgeon General was selected by a group of medical associations and the tobacco industry submitting names for

consideration; is that accurate?
A I can't tell you exactly what the procedure was. My memory on that is very vague.
Q Did you know that years later in 1964 when that report came out, the Surgeon General report stated, quote, Cigarette smoking is causally related to lung cancer in men, close quote, did you not?
A Without vouching for the exact words, that's the substance of what he concluded.
Q As a result of that statement, did American Tobacco voluntarily issue any warnings to cigarette smokers?
A No.
Q As a result of that study, you mentioned earlier that indirectly the American Tobacco had consulted with the AMA in some research that was done after the Surgeon General's report came out; is that correct?
A The AMA was to perform research as a grantee in this area, and we supported that effort.
Q All right. I want to show you a book which is marked Plaintiff's Exhibit No. 3. Have you ever had occasion to look at the American Medical Association's report which was issued at the end of that 12-year study?

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A I am sure I have seen this at one point or another.
Q All right, sir. That is a study that was published, according to the document, on May 27th of 1977. And according to that document, it examined the work of some 844 researchers in 85 United States and 13 foreign laboratories. Were you aware that that document was that extensive in its review of the literature?
A Well, as I say, I am certain that it passed through my hands at one point.
Q Okay. Were you aware of the fact that this was -- this study was sponsored by the six major cigarette manufacturers?
A Very much so.
Q And I believe at a cost of over $10 million; is that correct?
A I think that's a conservative estimate.
Q Were you also made aware that when the study was concluded that the AMA reported that their research did not alter in any way the findings of the Surgeon General that were issued in '64?
A I don't recall that.
Q To your knowledge did you report to your Board of Directors that the American Medical Association had concluded its report?

MR. EDMONSON: I believe he said he didn't remember, so he would not be able to say whether he would report something he does not remember.
Q To your knowledge did you ever discuss the American Medical Association report with your Board of Directors?
A I can't remember whether it was mentioned at the board meeting.
Q To your knowledge did you ever tell your Board of Directors that the American Medical Association study had not altered the Surgeon General's conclusion in '64 at any time?
A I can't recall whether that statement was made at a board meeting.
Q You don't recall any specific meeting with your Board of Directors -- Board of Directors where the issue of smoking and health was discussed, do you?
A I can't cite any such incidents. I am sure it was mentioned in one context or another. I am sure the board was informed about our support of AMA. It would have been, but I can't dredge up specific instances of what took place at board meetings.
Q All right. Now this report was issued in 1977 at a time when you were the president, is that accurate, of American Tobacco?

A '77, yes.
Q Did you report to your stockholders that the

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American Medical Association had done a 12-year study that verified the Surgeon General's report of '64?
A I don't believe we did.
Q Let me show you a document which is marked as Plaintiff's Exhibit 4. Can you identify that, sir, as the Surgeon General's report of 1979?
A Well, I don't see the date on here.
Q I believe your finger might be just on it. It's very faint. It says, Don't release until some date in '79. It's very difficult to make out. I apologize for that.
A I see that, yes. Yes.
Q You have had occasion to review that document?
A I am sure I did.
Q Were you aware that that report, also some 15 years after the '64 report, concluded that cigarette smoking is causally related to lung cancer in both men and women?
A In general, I think so.
Q After the '79 report was issued, did you report those findings to your Board of Directors?
A Well, I think I answered that earlier by

saying that while the subject of smoking and health could easily have been discussed at any given board meeting, I can't put my finger on this and say, yes, this is something that we talked to the board about.
Q Do you know if you reported those findings to your stockholders?
A I think that I would remember, and I am quite certain that we did not.
Q Okay. Did American, as a result of the 1979 report, change its stated public position on smoking and health?
A We saw no reason to change. I might add, just so that we get to the basis of all of this, that a lot of this material is a rehash of earlier studies that were repeated, analyzed and elaborated on, and contained no real, really new information superseding or changing in any way the original studies by the American Cancer Society and Hammond and Horn on which most of this was based.
Q I am going to object to your answer as being nonresponsive, Mr. Heimann, and I want to ask you a question, sir. As a result of the 1979 study, did American Tobacco change its position on smoking and health?
A No.

Q All right. Do you know what a carcinogen is?
A I am not so sure anyone does exactly, but I know in what context the word is used. It's usually used in connection with laboratory animal studies to denote a substance which is supposed to cause cancer.
Q All right. Let me go back just a moment to a statement you made earlier about the formation of the

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Tobacco Industry Research Committee in 1954. That subsequently became the Council for Tobacco Research; is that correct?

A That is correct.

Q And it still had no research facility, did it?

A It did not.

Q It didn't have any laboratory or any facility that studied itself smoking and health?

A No.

Q All right. It was simply an office that had an advisory group of scientists and doctors that approved grants when grant applications were made and disbursed money for use in financing those studies?

A That is correct.

Q All right. I want to show you what's marked as Plaintiff's Exhibit No. 5. It's an article entitled, "Addictive Aspects in Heavy Cigarette Smoking," close

quote. Have you ever had occasion to see that article to your knowledge? Perhaps that's an unfair question because I am certain that it's difficult to remember every article, but does that article stand out, I guess I should ask, as one that you may have seen in the past?

A Well, it doesn't.

Q Is that article and that research sponsored in part by the Council for Tobacco Research?

A According to the marking in red here, it says, "This work was supported in part by grants from the American Cancer Society and the Tobacco Industry Research Committee.

Q The Tobacco Industry Research Committee is the same committee which Mr. Hahn initially gave birth to; is that correct?

A That's the same one, yes.

Q Would you turn to the last page where the conclusions are stated on that report? And I have marked in red. And will you read, please, the conclusion that is marked in red?

A The conclusion states, "Heavy cigarette smokers thus appear to be true addicts showing not only social habituation but mild physiologic withdrawal effects."

Q Were you aware that in 1962 research that was

funded in part by the Tobacco Industry Research Committee had concluded that cigarettes were addictive?

A I was aware that the claim had been made in various quarters.

Q Were you aware that it had been made as a result of studies that had been funded in part by the Tobacco Industry Research Committee?

A I can't say I was aware of that nuance at that time.

Q To your knowledge has American Tobacco Company ever done a study on the addictive nature of nicotine?

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A On the addictive nature of nicotine? I don't believe so.
Q All right. To your knowledge did American Tobacco Company issue any warnings to smokers in 1962 that there was some research showing that cigarette smoking was addictive?
A No.
Q I want to show you a report of the Council for Tobacco Research USA, Inc., and I apologize. I simply -- the only one I have is a 1984 report. But you mentioned earlier that the research that was sponsored by the Council for Tobacco Research was reported annually in a report of that association; is that

correct?
A That is correct.
Q I will hand you this, sir. I believe it is marked Plaintiff's Exhibit No. 6. Does that appear to be an accurate copy of the report that you were alluding to; namely, the report which reports in abstract forms the reports or the studies that have been funded by the tobacco industry?
A This is the type of a report that was made annually, if that's your question, yes.
Q If you would turn to page 5 of that document. Would you read the last two paragraphs on that page, please?
A "This report contains abstracts of 174 papers that have appeared in the scientific media with acknowledgment of Council's support. The figure brings to at least 2,525 the number of scientific papers acknowledging such support published since the Council began supporting research into smoking and health by independent scientists. As of the end of 1984, the Council's program had provided more than $91,500,000 to 526 investigators for 897 original projects in 285 medical schools, hospitals and research institutions."
Q Thank you. Does that describe the breadth of the research you alluded to earlier that was being

conducted by the Council for Tobacco Research and funded by the cigarette manufacturers?
A Yes.
Q According to the statement you wrote, it sounds like there are 174 papers on smoking and health in this issue alone; is that correct?
A Well, I am not sure that was the meaning of what it said. Let me just check again. "Abstracts of 174 papers." That is brief condensations.
Q Do you know, sir, the approximate percentage of the research done by the Council for Tobacco Research USA, Inc., that is actually concerning smoking and health issues?
MR. EDMONSON: On what date?
Q On any date.
A This is all brand new to me. I didn't read the report with the 174 abstracts to begin with. Never

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had an opportunity to check the question you raise as to whether article A, B and C had anything to do with smoking and health. So I have never asked the questions. It never occurred to me.

Q Let's turn then to the Council for Tobacco Research reports back when you were president. I will tell you, sir, that in 1978 the evidence will show that in a study entitled, quote, Bacterial Clearance From the

Lower Respiratory Tract of the Mouse; Effects on Acute Cigarette Smoke Exposure" -- the article, Mr. Court Reporter, is, quote, Bacterial Clearance From the Lower Respiratory tract of the Mouse; Effects of Acute Cigarette Smoke Exposure, close quote.

The statement is made, and I am quoting, "Exposure to cigarette smoke was accompanied by impairment of lung clearance and a greater increase in bacterial detention related to the length of time the animals were exposed to smoke," close quote. Were you aware that animal studies had indicated that back while you were the chief executive officer or president of American Tobacco?

A I was aware of many claims based on animal experimentation to that effect and to similar effects. I was also aware of the fact that this type of experimentation had grown to be something of a cottage industry beginning in the '20's, and that many, many scientists have done many, many studies, and none of them have proved that coal smoke is injurious even to laboratory animals, apart from the question as to how relevant that is to human disease.

Q And were you aware that in 1978 the Council for Tobacco Research USA had sponsored a study which included from that study that exposure to cigarette

smoke was accompanied by an impairment of lung clearance?

MR. EDMONSON: Mr. Heimann, if you can recall that specific article, you may answer the question. But if you cannot, then you don't have to answer.

A Well, I can't remember the specific article.

Q Okay. Do I understand from your previous testimony that you do not accept animal studies as being valid in terms of determining if smoking is hazardous to the health of humans?

A I have stated that before, yes.

Q While you were president and chief executive officer of American Tobacco, did you ever address what action your company would take if a study funded by the tobacco industry found a relationship between smoking and lung cancer?

A No.

Q Does advertising play a role in a person's selection of a cigarette?

A We hope so. When we advertise, the figures don't confirm this, but we do make the effort, and I think it's fair to assume that the expenditure of large

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funds for advertising does give status to a brand, and, therefore, influences some people to select that brand.

Q Okay. Is one of the objectives of

advertising for cigarettes simply to put your advertising best foot forward and hope it will serve all purposes?

A Yes.

Q It will attract new smokers and keep your loyal ones?

A Exactly.

Q Do I understand that one of the purposes in advertising is to maintain brand loyalty; is that correct?

A Yes. It is correct.

Q Is brand loyalty what you referred to when you were describing your company's efforts to keep people who smoke one brand smoking that same brand?

A Yes. You could use the word repeat business as a synonym for brand loyalty in this context.

Q Is it to reinforce that person's desire to smoke?

A No, no, no.

MR. EDMONSON: Objection.

A That's a different question.

Q Does it reinforce that person's desire to smoke that product?

A Yes.

Q Okay. There are over 60 brands of

cigarettes, as I understand it, on the market?

A Could very well be.

Q To determine the effectiveness of an advertisement on a consumer, the ad has to be considered in the light of competing ads; is that correct? You don't advertise in a vacuum in this society, do you?

A No, but why I hesitate is that you try to make your ad unique and different from the other fellow's ad.

Q Exactly.

A Which doesn't exactly comport with what you just stated that you have to do what you do in the light of what the other person does. You try to make yourself different from the other person, not imitate.

Q Let's go at it this way. The reason you advertise is because other people advertise. You have to advertise to sell your product, don't you?

A I think that's true, yes.

Q In order to determine if your advertisement is going to lure consumers to buy your product, you have to consider it in light of other advertisements advertising the same type of product, do you not?

A Yes. All right. I will agree to that. Certainly.

Q The point being that no one advertisement in

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our society, whether it be concerning cars or cigarettes, can be considered in a vacuum unto itself. It has to be considered with the advertising of the industry; is that correct?

A That is correct.

Q All right, sir. Is it also correct that there is a referred effect to advertising? And I understand you have had some advertising courses, and if I understand what a referred to effect means -- Mr. Heimann smokes Pall Malls, I like Mr. Heimann, therefore, I like someone that smokes Pall Malls. Is that a recognized effective advertising?

A Oh, I hope that would be the effect if I was smoking Pall Malls, and I do smoke Pall Mall. Word of mouth you could say. It's in the same ballpark. That is, apart from advertising I think what you are saying to me is that the type of people who use a specific product are sometimes in themselves advertisements for that product.

Q Let me ask it another way. Does advertising determine consumer expectations?

A Well, in some cases it does and some cases it doesn't, and consumer expectations are influenced by things other than advertising. So you have got a mix here.

Q Must people feel comfortable and feel happy with an ad in order for an ad to be effective?

A Well, let me answer that by saying it would make no sense whatsoever to spend money on an ad that made people uncomfortable.

Q The number one rule in advertising is it has to make people feel good about the product, correct?

A Well, that's a different question than the one you just asked, but I certainly say that my answer to that question too would be yes. Sure.

Q Okay. One source of expectations concerning a product which a consumer has are the advertisements of that product; is that accurate?

A I would agree with that.

Q Would you expect a consumer to rely on your advertisements?

A Yes, our advertising is truthful, and we would anticipate that they would rely on it if they chose.

Q That's sort of your promise for the consumer to expect from your product, isn't it?

A Yes, it is.

Q Now in addition to advertising while you were with American did it also promote cigarettes in other ways than advertising?

A Oh, yes.

Q I believe during your tenure with American, in fact, every employee got a free pack of cigarettes

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each day; is that correct?
A That goes way back. Yeah. During my tenure and everybody else's tenure.
Q Did you also have any arrangement with any people in the media industry about the use of your products in movies?
A There might have been a little promotional activity along that line, but not much.
Q You would simply provide your cigarettes free of charge if a movie was being filmed that would use your product?
A I think we did on some occasions, yes, but it was a minor activity.
Q During the course of a movie nobody can smoke that much, can they?
A No.
Q Did you have arrangements with the airlines whereby you would give free samples?
A We did that, yes, and I can remember the airline. It's American Airlines.
Q Okay. Now throughout your tenure with American, it was not only American's position but your

position that cigarettes were not injurious to health; is that accurate?
A Through my tenure?
Q Yes.
A Yes, that is so.
Q That's something that American Tobacco wanted the public to believe; is that correct?
A Yes.
Q It's a statement that American Tobacco placed great reliance on?
A We issued that statement, yes. Certainly we wanted them to believe it.
Q As far as you're concerned, a person is justified in relying on that statement?
A Yes.
Q Okay. No reason you know of why the public shouldn't accept your company's position, is there?
A Well, in the area of scientific integrity I know of no reason why they should not accept our --
Q Position?
A -- our position. I know as a practical matter with a great deal of material being issued by scientists of one kind -- of one persuasion or another, it's rather difficult to get them to even know our position.

Q When the public smokes your company's cigarettes, they are doing exactly what you want them to do, correct?
A That's what we like them to do, to smoke our brands.
Q You want them to buy your cigarettes, you want them to smoke every cigarette in the pack, and you want them to buy another pack, don't you?

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A Yes.
Q As far as you're concerned, a person can smoke one pack, two packs, however many packs he wants to a day; is that accurate?
A Yes. Well, it's nothing that we prescribe or suggest or wish for.
Q But that's your opinion?
A Well, what people want to do is their own decision. It's not our decision. We try to keep our product clean, good tasting, of good leaf, well packaged and preserved and fresh, and in the best possible condition to produce pleasure on the part of our customers.
Q As far as you are concerned though, American Tobacco is concerned, you know of no reason why they shouldn't smoke as much as they want to each and every day of their life; is that correct?

A We never got into that subject of what -- how much anybody should smoke.
Q Would you blame a person for smoking two packs a day?
A No.
Q You wouldn't fault him for smoking one pack or two packs; would you?
A I don't think so.
Q You put flavorings in each brand of cigarettes to keep a smoker attracted to that brand?
A Yes, I would say. I can't think of any of our products which were not flavored. It may have been some minor brand left over from early years, but with respect to most of our products, each one has its own flavoring recipe.
Q That's common in the industry?
A That's common.
Q Has your company ever advertised that these cigarette have flavorings that are added to them, to your knowledge?
A I don't think we have dwelt on the subject of flavoring as such. I can't recall any instance that we have.
Q Do you consider the specific recipe for each brand of cigarettes a trade secret?

A Yes.
Q The actual ingredients themselves are common knowledge. It's the recipe that you use that's actually protected?
A I think that's a fair way of putting it, yes.
Q The actual ingredients are pretty common in the industry. Everyone knows what they are. It's simply a matter of formulating a specific recipe that makes that brand taste different than another?
A That's right.
Q Do you sell cigarettes overseas?
A Yes.
Q Are warnings required on all cigarettes that

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are sold overseas?
A I can't answer that question from memory. Some countries do require it, some don't.
Q Those countries that don't require it, does your company issue warnings?
MR. EDMONSON: What time frame are you talking about?
Q It can only be since 1960 or '79. I don't know what the exact date is. Let me rephrase it. From the time that Congress imposed a requirement that you place warnings on cigarettes, has your company been involved in selling cigarettes to overseas markets?

A Yes.
Q In those countries that do not require warnings, does your company voluntarily place a warning on the packages?
A No. That is it didn't up until 1980.
Q Okay. And the reason is that American disagrees with the warning, doesn't it?
A They certainly do.
Q You don't think they harm smokers, so there is no reason to put the warning on them, do you?
A We believe our product is not injurious to health.
Q As far as you are concerned, is the Surgeon General simply wrong in concluding that cigarette smoking causes lung cancer?
A I would use the term "misguided."
Q So if he is misguided, then I take it your opinion is he is wrong?
A I was simply trying to be polite about it.
Q But not being polite about it, in your opinion he is wrong?
A Dead wrong.
Q Congress is wrong requiring these warnings, correct?
A We do not think they are justified.

Q So they are wrong?
A They are wrong.
Q Have you ever heard of the World Health Organization?
A Yes.
Q Canadian Ministry of National Health and Welfare?
A Yes.
Q American Medical Association?
A Uh-huh.
Q American Lung Association?
A Uh-huh.
Q American Heart Association?
A Yes.
Q American Cancer Society?
A Yep.
Q American College of Chest Physicians?
A Yes.

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Q American Association for Thoracic Surgery?
A Yes.
Q American Public Health Association?
A Yes.
Q The U.S. Veteran's Administration?
A Yes.
Q The British Ministry of Health?

A Yes.
Q Canadian Cancer Society?
A No.
Q Canadian Heart Association?
A No.
Q Of those that you recognize, did you know that each one of those health organizations has concluded cigarette smoking is hazardous to your health?
A Well, without tying me to each and every one, I am familiar with the fact that most of them have denounced cigarettes at one time or another.
Q In your opinion are all of these organizations wrong?
A Yes.
Q Do you know a single medical association or public health service that has concluded in the past 20 years that cigarette smoking is not hazardous to your health?
A I can't name any.
Q In fact, the only organization that says cigarette smoking is not hazardous is the tobacco industry, isn't it?
A I wouldn't go that far. There are many eminent scientists who pointed out early on the fallacious nature of the evidence which was adduced not

just in 1954 but in the decade since, repeated over and over again in the Surgeon General's report and so on. And when I say "eminent scientists," I am talking about, let's say, number one, the number one biostatistician in the United States, and, number two, the father of statistics in the United Kingdom, Sir Arnold Fisher. So if you go right to the top to people who know, they will tell you that this whole statistical machine is a reprehensible propaganda campaign, that it's based on spurious statistics, and that it's socially irresponsible.
Q Can you refer me to any medical study that's been performed in the last 15 years that has concluded that smoking does not cause lung cancer?
A It's pretty hard to prove a negative in science or in law or in any other department of human behavior. I don't think such proof exists.
Q Can you tell me any medical study that's been performed in the last 15 years that concluded that smoking is not associated with lung cancer?
A There have been some. I can't give you chapter and verse the last 15 years.
Q Has American Tobacco to your knowledge ever

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hired a group of doctors to do any epidemiological studies to determine if there is any health hazards in

smoking?
A No, I don't believe we have.
Q Has American Tobacco ever set up a lab to study the possible health effects from smoking?
A Set up a lab? Well, we have a lab, but it's not for that purpose.
Q Have you ever had a research facility set up at American Tobacco to study the difference between the health of smokers versus nonsmokers?
A Oh, no, no.
Q Have you ever done any clinical studies on the health consequences of smokers as compared to nonsmokers?
A No.
Q Has American Tobacco ever conducted any study to determine how the medical professions in the United States perceive hazards associated with smoking?
A There have been some studies. I think I mentioned in my earlier testimony in Texas that the Gallop organization did a series of such studies.
Q Did they conclude that the American public did not perceive smoking as being hazardous?
A No. They concluded that a certain percentage of people were inclined to credit the cigarette anti-cigarette claims, and a certain percentage didn't

know, and a certain percentage rejected the anti-cigarette claims. But I can't tell you from memory just what the percentages were.
Q You are not, of course, a medical doctor, are you?
A No.
Q You have never been taught how to diagnose lung cancer?
A No.
Q You have never treated lung cancer?
A No.
Q Do you think a medical doctor would be more qualified than you are to determine if cigarette smoking is hazardous to a person's health?
A Well, let me say without being boastful that the real nub of this question is a proper use of statistics. That's how this whole megillah arose. And that most physicians have little or no knowledge of statistical nuances and would be easily taken in, misguided by the improper use of statistics.
Q Is it your opinion then that you are more qualified than a medical doctor to determine --
A In that area, yes.
Q -- health hazards? Let me make sure I get the question straight. It's your opinion that you are

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more qualified than a medical doctor to determine if cigarette smoking is hazardous to your health?

A To determine whether the statistics that allege such causation are valid or not.

Q Do you think the Surgeon General of the United States is more qualified in his resources than you are to determine if cigarette smoking is hazardous to your health?

A Frankly, no.

Q Do you think the American Medical Association is --

A No, no.

Q Is it correct that you disagree that every study that's ever been done that has concluded that cigarette smoking is hazardous to your health?

A I can't claim to have read every study that's ever been done.

Q Every study that you have read, though, do you disagree with that concluded that smoking is hazardous to your health?

A I think so. Yes, yes.

Q All right, sir. There's been a tremendous amount of research on the area of smoking and health in the past thirty years, and I have heard an estimate of over 30,000 studies, and I am not saying that it's

accurate, but there has been a tremendous amount; correct?

A Correct.

Q Mr. Heimann, cigarette smoking is clearly a marker involved in lung cancer, correct?

A I think in a statistical sense you would have to agree to that.

Q The truth is you now agree that smoking is associated with lung cancer, correct?

A I now agree?

Q Yes, sir.

A I agreed 25 years ago that it was associated statistically, yes.

MR. DAVIS: No further questions. Thank you.

THE COURT: All right, Mr. Wilner.

MR. WILNER: That concludes -- might we have a five-minute break to get our equipment reset and --

THE COURT: Ask the jury to step back in the jury room.

(Jury exits courtroom; discussion off recor and recess)

(Change of reporters at 3:15 p.m.)

THE COURT: All right. Are you ready to proceed, Ms. Hartley?

MS. HARTLEY: Yes, Your Honor.

THE COURT: Mr. Nyhan?

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MR. NYHAN: Yes, Your Honor.
THE COURT: Bring them in, please.
(The jury entered the courtroom, was seated in the box, and the following further proceedings were had in the presence of the jury.)
THE COURT: All right. Call your next witness, Ms. Hartley.
MS. HARTLEY: We would call vice president of research of American Tobacco -- is it by deposition taken October 19th, 1995 -- Robert K. Sprinkle, III.
THE COURT: All right.
Ladies and gentlemen, this is obviously not Mr. Sprinkle. This gentlemen is from Ms. Hartley's office. He's an attorney there. He's going to read the answers of Mr. Sprinkle.
This is a deposition taken under oath just like the video deposition. The only difference in this deposition and the other is it's not filmed. It was merely recorded. And this witness was under oath, and you are to treat it the same as if he were

on the stand today answering the questions that were asked of him. And all this gentleman's going to do is read the answers when Ms. Hartley reads the questions, okay?
You may proceed.
MS. HARTLEY: Good afternoon. My name is Stephanie Hartley. We met earlier. I'm pleased to represent the plaintiff in this case. This is Sean Cronin. He will be reading the answers of the deposition of Robert K. Sprinkle, III, who was the vice-president of research of the American Tobacco Company. The deposition was taken on October 19th, 1995.
(The following testimony was read into the record with Ms. Hartley reading the questions, and Mr. Cronin reading the answers)
BY MS. HARTLEY:
Q What's your name and residence address?
A My name is Robert S. Sprinkle, III, 9217 Groomfield Road, Richmond, Virginia, 23236.
Q How long have you lived in Richmond?
A Forty years.
Q Presently employed?
A No.
Q Last employment?

A American Tobacco Company.
Q Until when?
A January the 10th of 1995.
Q Reason for no longer being employed?
A American Tobacco Company was sold and my services were no longer needed.
Q Your age?
A Sixty.
Q Did you receive any kind of a retirement

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package from American Tobacco?
A Yes.
Q Tell me, if you would -- give me a sketch of the time frame when you started with the company and what -- the major jobs you've had.
A I started with the company, I guess it was, June of 1957 as a bench chemist. Uncle Sam took me in, I guess it was, January of '58, two years; returned to America in '60, again, as a bench chemist. And over the times various duties: product development, new products, chemistry; was made deputy research director in, I guess it was, 1976. I guess I was made a vice-president in 1978, '79.
And these dates are not all that exact.

When the job was terminated, I was execute vice-president of research.
Q Of research?
A Research and quality assurance.
Q That would have been 1950 -- '95 when it was terminated?
A Yes.
Q So before I get too much further on, tell me about your early training and any degrees that you have.
A I have a BS degree in chemistry.
Q From where?
A Emory & Henry College.
Q Where?
A Emory & Henry College.
Q A lot of people have heard of Emory University. Is that related to it?
A No.
Q Where is Emory & Henry College located?
A Emory, Virginia.
Q Is it still in operation?
A Yes.
Q What was the date of your degree?
A June of '57.
Q You do not have any advance degrees in

chemistry?
A No.
Q Do you have any degrees or any expertise in the field of human health?
A No.
Q I want to start in 1957 when you joined the company as a bench chemist, and as I understand it you were in the old facility on the Jefferson Davis Turnpike?
A Uh-huh.
Q Who did you report to?
A Dick Irby, I-r-b-y.
Q I-r-b-y?
A Uh-huh.

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Q What was his job title?
A I don't recall now.
Q Did Dick Irby run the operation out there on the Jeffers -- Jefferson Davis Turnpike?
A No. He was in charge of one section.
Q How would you describe that section?
A Well, it was, I guess you'd say, physical chemistry.
Q Were there any other sections?
A Oh, yes. There was the agronomic section.
Q Agronomic?

A Yes.
Q Okay.
A There was quality control section, organic chemistry, analytical chemistry.
Q And Dick Irby was in charge of the physical chemistry, and you were working with Dick Irby, right?
A Yes.
Q So then there came a time when you moved up in the ranks and became -- what was the next job, a deputy research director, or did you have some job in between?
A There were jobs in between, you know, as far as titles and what have you. I never paid a whole lot of attention to them. You know, it was -- product development was one area.
Q When you first began as a bench chemist, what were your duties?
A At the time I started with the company that particular section was developing from scratch the first gas chromatographic procedure for analyzing cigarette smoke.
Q That was ongoing project --
A Uh-huh.
Q -- when you got there?

A Uh-huh.
Q Did the gas chromatograph ever get developed?
A It most certainly did. It was a very high -- it was very high tech. There was no commercial equipment in the marketplace. It was built by blowing your own glass -- glassware. The work was published, the procedures and findings.
Q The findings of what was in cigarette smoke from different kinds of cigarettes?
A Based on that procedure, yes. It didn't -- it just took a group of -- it isolated and identified a group of constituents in smoke.
Q Right. It didn't necessarily identify every constituent?
A No.
Q It was designed to identify a certain subset of constituent?
A It was the forerunner in the tobacco

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industry of gas chromatography, the very infancy. It was very crude.

Q Did it get succeeded by some more sophisticated gas chromatograph at one point in time?

A Oh, yes.

Q Inside the company?

A Yes.

Q Developed by the company?

A No.

Q So eventually the company was able to buy from outside vendors a next-generation gas chromatograph?

A Yes.

Q Roughly what year was that?

A Let's see. I guess that started to come on line sometime in the early 60's.

Q Now, if I went to the laboratory today, would I find a gas chromatograph of some sort?

A No.

Q Why not?

A The building is a shell.

Q A shell?

A It's been sold. There's nothing in the building. Nothing that American Tobacco Company had is in that building now. It's all been moved.

Q Basically, the lab was closed and all the contents were sold or removed?

A Yes.

Q And then -- and what happened after you left -- and that happened after you left?

A Yes.

Q Prior to your leaving was there some sort of gas chromatograph in the laboratory?

A Correct.

Q So you were involved in this work trying to develop this machine, or developing this machine, in the early -- in the late 1950's.

Tell me what other major projects you worked on up through the late 50's and early 60's.

A Well, I came back following the military duty in '60 and went to work again in the physical chemistry section working with mass spectroscopy again trying to identify constituents of tobacco in tobacco smoke.

Q What was the purpose of isolating constituents in tobacco smoke?

A Well, that was part of the research laboratory's function, to identify components of tobacco in tobacco smoke, only one portion.

Q Who cared what components were in tobacco smoke?

A American Tobacco cared.

Q Somebody from American Tobacco Company had, as far as you know, told the research

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department to analyze what was in it?

A I don't know who told who, but that was one of the charges and responsibilities of the department of research, along with product development, product improvement, quality control, quality assurance.
Q When you arrived on your job in 1957 and shortly thereafter, was there a library or research library that was kept at this research facility?
A Yes.
Q What types of books or publications were contained in there?
A Patents relating to tobacco and tobacco products, chemistry books. You know, it was a research laboratory that the employees could use to look up something to do with chemistry, physical chemistry, biology, agriculture.
Q Did you subscribe to any periodicals?
A Yes.
Q And those periodicals would have been periodicals in the chemical field, for one?
A Yes.
Q Were there medical periodicals that were received?
A Yes.
Q Was there someone in the research

department known to you, either back then or at any time, who was responsible for going through the medical periodicals, to review them to see whether there was something there of interest?
A I'm sure there must have been or we wouldn't have taken the articles, you know. What they did with them, that wasn't my field.
Q Let me get this straight. You were not charged with that responsibility at any time in your career?
A No.
Q As I understand it, you were not trained in human health or the interpretation of medical issues?
A Correct.
Q So you did not then or at any time go through medical articles and try to understand what they said or whether they were important?
A Correct.
Q I understand that you did some work with this gas chromatograph and then a mass spectrometer. Tell me then any other projects that you were involved with as you continued your work at American Tobacco Company.
A Well, from the physical chemistry section

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I went over into the section that was involved with isolating and determining constituents of tobacco.
Q As opposed to tobacco smoke, this was constituents of tobacco?
A Yes.
Q How in general is that done? What kinds of tests or devices are used?
A Basically, that was wet chemistry.
Q Which means?
A Well, you take tobacco and you extract it with alcohol or water or some other solvent, and then, you know, through analytical chemistry -- at that time it was all wet chemistry. And nowadays there's liquid chromatography.
Q Back then with wet chemistry you had to analyze what was in the tobacco just by using conventional chemical methods; would that be fair?
A Correct.
Q Was this done in general to assure that the tobacco that was being received by American Tobacco was a particular specification or, on the other hand, was it being done to find out what was in tobacco in general?
A For both reasons.
Q So give me a rough time frame when you

were involved with this tobacco project?
A I would say that it was from '62 to '63.
Q And carrying along then to any other major project that you've been involved with in sequence from this tobacco project.
A Well, the next new section was formed or referred to as new products.
Q How long did you work with the new products sections?
A Let's see. From there until '68 or '69, maybe.
Q What was your next major project?
A When we developed a number of different cigarettes. Some were introduced; some --
Q Some were what?
A Some were introduced in the marketplace. I mean, this was research, you know.
Q So anything else -- or what next would be a better question.
A Well, I guess from there I became manufacturing coordinator.
Q Was this still at research and development?
So what does a manufacturing coordinator do?

A Well, with all of the new projects that were being put into the marketplace, the manufacturing coordinator coordinated the research operations with manufacturing.
Q That makes sense.

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Can you give me a little more specifics, though?
A Well, you know, for manufacturing we got a new product -- another new product coming. Oh, God, no, we don't want another one. But, anyway, here it comes.
Q Yeah.
A The product specifications, the type of filter that went on it, the type of packaging, the type of tobacco that went into it, all of the specifications having to do with that cigarette.
Q Who wrote those specifications? Who would?
A Well, the new products division who developed the product would establish the specifications.
Q And then you would have to coordinate with manufacturing how to get a product manufactured in a large scale that would meet those specifications?
A Correct.

Q How long did that last?
A That last until, I guess, '76.
Q What were the brands that you were responsible for being manufacturing coordinator?
A Well, basically every product that the company made.
Q And that's a lot of products?
A Yes, it was.
Q I never -- I've never seen a list of all of these products, have you?
A Oh, yes.
Q Where are these lists?
A I don't know at this point in time.
Q You saw one a while ago, I guess?
A January of '95 is the last one I've seen.
Q Okay. Very good. So what is next in terms of your major project?
A Well, I became deputy director of research.
Q All right. And that I think we established before was in?
A '76.
Q '76, okay.
And what were your job duties as deputy director of research?

A Well, it was basically the supervision and direction of the department of research.
Q The whole department?
A Correct.
Q Deputy director of research 1976. What was your next position?
A Director of research.
Q Director of research. What year?
A '78.
Q I meant what was the next position after

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director of research?
A I was made vice-president of research.
Q So you became vice-president of research at one time, right, sometime after 1978?
A In that time frame, yeah.
Q Did you stay in that position until you left -- until you retired?
A No.
Q What was your next position?
A I was made senior vice-president.
Q Senior vice-president of research?
A Of research.
Q Anything next?
A Executive vice-president of research and quality assurance.

Q Who did you report to when you were execute vice-president of research and quality assurance?
A Nautilus Johnson.
Q And the time period you were executive vice-president, we know that ended in 1995?
A Right.
Q When did it start?
A 1993.
Q Were you involved in any projects to analyze what is in cigarette tar?
A Yes.
Q And what kind of project was that?
A What kind of a project?
Q What was it called, the project? Identify it so we can talk about it.
A Particulate smoke.
Q Particulate smoke.
What type of machines or devices were used to measure or identify the substances in cigarette tar?
A Attempted to use mass spectroscopy again.
Q When were you involved in a project to use mass spectroscopy to figure out what was in cigar tar?

A Late 80's, early 90's.
Q Late 80's?
A Correct.
Q Was that the first such project that you were involved in involving the analysis of cigarette tar?
A That I was involved in?
Q Yes.
A Correct.
Q You told me that you worked on this mass spectrometer in the 80's and '90s. I'm curious if you know about any previous work that was done to analyze this cigarette tar, previous to 1980's or '90's?
A I sure there must have been. I'm not

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aware of it.
Q So as far as you know, the first time American Tobacco analyzed or tried to analyze what was in cigarette tar was the late 80's or early '90's as far as you know?
A Correct.
Q Did American find out what was in cigarette tar?
A No.
Q Any of its constituents?

A Some materials were isolated, but it was very complex mixture, very difficult to isolate and separate.
Q Was some kind of report done from this test?
A Reports were written periodically.
Q So were these reports on what was in this cigarette tar published to the general public?
A No.
Q Were they put in medical or chemical journals?
A No.
Q So what was done with this information?
A The work was never completed. We ceased to exist before the work was competed.
Q So this was one of the projects that was ongoing when the lab was closed?
A Correct.
Q The preliminary reports went where, as far as you know?
A Central files.
Q And where central files is today, nobody knows?
A Correct.
Q Now, this project to analyze cigarette tar

would have been ongoing for what, five or six years anyway, right?
A Correct.
Q Did you ever request that the results be made public?
A No.
Q Why not?
A They were too preliminary.
Q Did you think the project was worth while and should be continued?
A We were continuing to investigate in that area, but it was becoming frustrating that we were not learning more.
Q Did you think that the project should be pursued, that you might learn as much as you could about what was in this cigarette tar?
A Let me make sure I understand the question. Did I think it was a -- was of sufficient interest?
Q Yeah.

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A Certainly.
Q Sure. What was the purpose of finding out what was in cigarette tar?
A Another effort to try and learn as much as we could about tobacco and tobacco smoke.

Q Now, of the compounds that were isolated, what types of things were found?
A It was a mishmash of a lot of things. And having been away from it this long to try and --
Q You couldn't really remember?
A I couldn't tell you.
Q Of the compounds that were found -- when a particular compound was found, did you check that compound to see whether it might have some harmful effect on human health?
A No.
Q Did you subject humans or animals to any amount of this compound to see whether it hurt them?
A No.
Q Were any of these -- did you check to see whether any of these compounds might be listed in some book somewhere known as a carcinogen.
A No.
Q Was that not part of what you were charged with the responsibility of doing?
A No.
Q Who at the company -- when you were last there, was there a medical doctor on the staff that you knew?
A No.

Q Was there anybody that you knew, besides yourself, who was getting a list of these compounds to check whether they were harmful to humans?
A No.
Q Now, if we go back to 1957 to your gas chromatograph work, I understand that you were at that time not analyzing what was in the tar so much as analyzing what was in the gas phase? Did I get that right?
A Correct.
Q Did you find out what was in the gas phase of cigarette -- of cigarette smoke?
A We identified a number of constituents.
Q Were these constituents published?
A Yes.
Q Where?
A Journal of Tobacco Science.
Q Did American Tobacco conduct research to determine whether any of these constituents were harmful to human health?
A No.
Q Did you ever participate in any studies or tests to determine whether or not nicotine in cigarettes was addictive in human beings?
A No.

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Q Were you ever aware that any such tests were done within the laboratory of American Tobacco Company?
A No.
Q Were you ever asked to study the question of whether nicotine was addictive in human beings?
A No.
Q Did you ever request -- make a request to management of American Tobacco Company that that subject be studied?
A No.
Q When was the first time that you received any information about the question of whether nicotine is addictive to humans?
A I don't know. When was the first time?
Q Yeah, how long ago.
A I guess the thing that comes to mind is the 1964 Surgeon General's Report.
Q Did you review the 1964 Surgeon General's Report?
A Yes.
Q When is the first time you saw it?
A Oh, I guess it was sometime in the -- God, I don't know -- 70's.
Q In the 70's?

A I don't really know.
Q Would you say that the 1964 report was the first time that you had any specific evidence on the question of whether nicotine is addictive?
A I mean, I'd have to say no, because it was information being -- it was information being published in the media.
Q The media?
A On an ongoing basis.
Q What about scientific information aside from what's in the media?
A Well, I guess it would have to be the Surgeon General's Report.
Q In '64?
A Yes.
Q And as I understand it, American Tobacco, as far as you know, conducted no scientific tests on the question of whether nicotine in cigarettes is addictive to human beings; is that right?
A Yes.
Q Did American Tobacco, to your knowledge, conduct scientific tests to determine whether or not cigarettes were harmful to human beings?
A No.
Q As far as you know, that was never done at

American Tobacco?

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A Correct.
Q Did you ever request that American Tobacco carry out scientific research to determine whether cigarettes were harmful to human beings?
A No.
Q Did anyone ever request you to do that?
A No.
Q Did any management person from American Tobacco ever ask you whether cigarettes were harmful to human beings?
A Not that I recall.
Q Regardless of whether you were asked, did you ever report to any management person at American Tobacco on the subject of whether cigarettes were harmful to human beings?
A No.
Q To your knowledge, did anyone at the laboratory in American Tobacco ever report to management, to your knowledge, on the subject of whether cigarettes were harmful to human beings?
A To my knowledge, they did not.
Q Did you ever write any reports, whether or not they were circulated to management, on the subject of whether tobacco was harmful to human

beings?
A No.
Q Did you ever have any conversations with Dan Johnston on the subject of whether tobacco was harmful to human beings?
A Don Johnston?
Q Don. I'm Sorry. Not Dan. Don Johnston.
A Not that I can recall.
Q Did you ever have any meetings with people in the laboratory where the subject of whether cigarettes are harmful to human beings was discussed?
A No.
Q Did you ever have any meetings with people in the laboratory where the subject of cigarettes -- whether cigarettes were addicting to human beings was ever discussed?
A No.
Q Did you ever report to American Tobacco Company management of any type whether or not cigarettes were addicting to human beings?
A No.
Q I'm asking, how can you achieve a measured amount of nicotine in the final cigarette? How do you -- "you" being American Tobacco -- how does

American Tobacco?
A We know what the nicotine content of each of the tobacco components is that makes up that cigarette.
Q Tobacco components?
A Uh-huh.

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Q Which means what, what kind of tobacco?
A Well, there's reconstituted tobacco, there's oriental tobacco, flue cured tobacco, burly tobacco, and Maryland tobacco.
Q And what?
A Maryland.
Q They all have different amounts of nicotine?
A Oh, yes.
Q So in making a cigarette that has a certain amount of nicotine, you can kind of blend these things together and figure out how much it's going to have?
A We can predict what it's going to have, yes.
Q You have to do more than that, don't you? I mean, you have to have uniformity from one cigarette in another if it's the same brand; it's supposed to have the same amount of nicotine?

A Without question.
Q So it's more than just prediction, you have to actually engineer it, don't you?
A Tobacco is a natural product. It's subject to climatic conditions. If the growing season is hot and dry, you get a different tobacco than you get from tobacco growing during the season where it's excessively wet. And every once in a while you get the ideal growing season. The nicotine varies up and down the plant by stalk position.
Q So how do you adjust the final product so it has the amount of nicotine that you say it has?
A We keep an inventory of tobacco, 24 months on average, and we know what the nicotine content is of each type of tobacco we use by the stalk position by the crop year.
Q So by blending the tobacco you can achieve the amount of nicotine that you want to in a cigarette?
A Yes.
Q You could make a cigarette that has less nicotine?
A Oh, yes.
Q And you could make one that has more?

A Correct.
Q Were you aware of the pilot plant that was grown of nicotine fortified reconstituted tobacco?
A Was I aware of the pilot plant?
Q Yes.
A Yes.
Q How much nicotine fortification was done to this reconstituted tobacco?
A I don't know. I was not involved in that.
Q And the purpose was to increase the nicotine in the reconstituted tobacco and,

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therefore, in the end product?
A Yes.
Q Where was the nicotine obtained to put into the reconstituted tobacco to make it have more nicotine?
A I don't recall.
Q Could American Tobacco buy nicotine if it wanted to?
A At one time you could.
Q Mr. Sprinkle, before we took a break you had said, I think, in your belief and understanding cigarettes do not cause cancer, fair?
A Correct.
Q And I think you said that you based that

on the idea that science does not know the mechanism by which cancer is formed?
A Correct.
Q And you said something about heart disease. Your understanding is the mechanism by which people get heart disease is not understood either, right?
A Correct.
Q And your understanding is that cigarettes do not cause heart disease, right?
A As long as we don't know what causes heart disease, you can't lay it at the foot of cigarettes.
Q Can you lay it at the foot of diet?
A No.
Q Can you lay it at the foot of stress?
A No.
Q So you can't really say that anything causes heart disease, right?
A Correct.
Q And the same is true, really, for any disease since we don't know exactly how it is formed.
A Correct.
Q Mr. Sprinkle, let me clear one thing up. I want to be absolutely sure that I understand that

it was not your job during the time that you were at American Tobacco to inform the management of American Tobacco about the health effects of cigarette smoking?
A Correct.
Q And that you did not, as a matter of your job and as a matter of course, discuss and inform upper management, including Mr. Johnstone?
A Correct.
Q And that he never asked you to do that; is that true?
A Correct.
Q And that you do not have training in epidemiology?
A Correct.
Q And that you would not be qualified to

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discuss epidemiological studies on the health effects of smoking?
A Correct.
Q And that you have not done so while at the company, true?
A Correct.
Q And that there is no one to your knowledge, or was no one at the company, who was qualified to discuss the medical aspects of

epidemiology as it relates to smoking and health?
A Correct.
Q Do you believe, sir, that cancer causing substances in cigarette smoke have never been identified? Is that true?
A Correct.
Q And I think you were asked some questions about the Surgeon General, do you remember, just recently?
A Yes.
Q Let me show you, sir, the 1989 report of the Surgeon General. Have you ever seen it before?
A Yes.
Q Let me ask you to read, if you would, into the record the conclusion on Page 21 of the physicochemical nature of tobacco.
A "The estimated number of compounds in tobacco smoke exceeds 4,000, including many that are pharmacologically active, toxic, mutagenic, and carcinogenic."
Q Let me stop you there. What does "pharmacologically active" mean to you?
A I don't know.
Q You don't know?
A No.

Q What does pharmacologic mean?
A I'm not a doctor.
Q Isn't that a chemical term?
A Not in my field.
Q You've never heard the word pharmacologic?
A I've heard of the word, but it's not in an area where I have any proficiency whatsoever.
Q What about "toxic," what does that mean?
A Yes, I've heard of toxic.
Q Is it true -- are there many -- are there many that are toxic out of that 4,000?
A In all likelihood, yes, there are some.
Q What does mutagenic mean?
A Mutations within cells, what have you.
Q Have you ever heard that there are compounds in cigarette smoke that are mutagenic?
A The Surgeon General has said so, yes.
Q Do you disagree with the Surgeon General that there are mutagenic compounds?
A I can't disagree with him because I'm not --

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Q You're not an expert in that area?
A Not an expert in that area.
Q How about carcinogenic? Isn't that what it says there, also?

A Correct.
Q Do you agree or disagree with what's stated by the Surgeon General?
A I can't state an intelligent opinion because it's not my area.
Q It's not your area, okay.
What's number two?
A "43 carcinogens have been identified in tobacco smoke."
Q Do you agree with that? Is it true?
A He's entitled to his words and his opinions.
Q You also mentioned that quality assurance was performed by American Tobacco to make sure the consumers got the best product that they could; is that fair to say?
A Yes.
Q Is it also fair to say that American Tobacco never tested its products to make sure that they were safe to consumers?
A Yes.
THE COURT: All right.
MS. HARTLEY: Your Honor, that's all I have. I believe the defense may have some portions of the deposition to read.

MR. BROWNING: That's correct, Your Honor.
THE COURT: All right. Mr. Browning.
MR. BROWNING: Good Afternoon. I'm Edward Browning and, I've been previously introduced to you and I'll introduced myself again just to break the monotony a little bit.
THE COURT: This is the same deposition, Mr. Browning, is it not?
MR. BROWNING: Yes, it is, Your Honor.
THE COURT: And he's going to ask some additional questions.
(Reporter's Note: The following testimony was read into the record with Mr. Browning reading the questions and Mr. Cronin reading the answers)
BY MR. BROWNING:
Q And for those of us who aren't familiar with cigarette products, give me some examples of new products that you were involved with.
A Well, we developed and introduced the first ultra low tar cigarette to the industry.
Q What was the name of that cigarette?

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A Carlton.
Q And when was that introduced?
A '64.
Q So you -- when you say "we," you were involved in that Carlton project?
A Yes.
Q So in '68, or so, you were involved in this, you continued to be involved in new product development and you helped the development of many different brands, fair?
A Correct.
Q When you were either deputy director or director of the research laboratory, did you make on behalf of the laboratory reports to the company or to executive officers of the company?
A Yes.
Q Did you make regular reports summarizing the activities of the lab?
A Yes.
Q How often were these regular reports made?
A Weekly.
Q What was the format of the weekly reports?
A Basically to deal with product development and quality issues.
Q Was that a process that, as far as you

knew, had been in place for some time when you reached that position?
A Yes.
Q Now, in addition your laboratory, or the laboratory that you ultimately became director of, as I understand it, did some work in the analysis of what this tar was made of, true?
A Yes.
Q So as I understand this, the purpose behind this gas chromatograph and the mass spectrometer was, in part, at least, and analyzed what this substance that is called tar is really made of?
A Attempts were made, let's put it that way, to identify tar, but basically the work was to do with the gas phase of cigarette smoking.
Q Well, let me stick with the tar for a minute, and then we'll go to the gas phase. Attempts were made to identify the chemicals in tar, true?
A Yes.
Q Have you ever tested cigarette filters?
A Yes.
Q What project were you involved in that tested filters?

A From a quality control standpoint.
Q These were filters that were already in

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production?
A Well, the raw material that goes into it.
Q Right. You tell me: Do you have scientific information on the question of whether nicotine was addictive or is addictive to human beings when you were director of the laboratory?
A Yes.
Q Where did you obtain this information, from medical journals?
A Newspapers, magazines, medical journals, you know, numerous sources, the Surgeon General.
Q Were you aware at any time of a project to see whether tar could be reduced with genetic variation of supplied tobaccos?
A Yes.
Q Why was it embarked upon to reduce tar in the first place?
A Well, basically to give the consumer another option, and at some point along the way the suggestion had been made by those in the medical area outside of American Tobacco, the Surgeon General or somebody, that in their view the best cigarette -- a better cigarette would be one that

had reduced tar and nicotine.
Q I mean, was there some kind of a -- did you know whether there was some kind of telephone line that consumers could call and they could call the company and say I want less tar?
A No. But part of our job and responsibility was to try and produce better cigarettes. And if, you know, somebody would suggest that a better cigarette would be one that had reduced tar and nicotine, we were more than willing to undertake the challenge. In fact, the American Tobacco Company did and, like I said earlier, introduced the first ultra low tar cigarette that this country had ever seen.
Q My question is -- I understand that. My question is, is your belief that cigarettes have not caused disease in any human being based on a review of scientific literature?
A I'd have to say yes.
Q So if it's based on a review of scientific literature, then what literature is it based on?
A Well, it's obvious that no one knows what causes heart attacks and strokes. No one knows what causes cancer. And if we knew, then we wouldn't be as -- we wouldn't be, as a country, spending

millions and millions of dollars every year continuing to search for the answers for what causes heart attacks, heart disease, what causes cancer, what causes any number of diseases.
Q And would you say then that your actions at American Tobacco, whatever they be, would be consistent or would have been consistent with the

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belief that cigarettes don't cause cancer or don't cause heart disease in whatever you do?
A It's always been our position that, you know, we don't know what causes cancer.
Q I understand. I don't want to go back into that. I'm just --
A And we're not saying that cigarettes do not cause cancer.
Q Did American Tobacco, when you were there, attempt to remove from smoke any ingredients that you believe caused cancer?
A I'm saying no because no one knows what causes cancer. We have done a lot of work to remove things from cigarette smoke from filtration and various means.
Q Do you believe that the nicotine in cigarette smoke is addicting to human beings?
A No.

Q What do you base that on?
A The fact that thousands of people quit every day.
Q Can you tell us what tar is?
A Well, tar is a very complex mixture, and I'm not sure that anybody knows everything that is in the particulate phase of smoke.
Q So when you called it the particulate phase of smoke, is that what you were referring to?
A Yes.
Q And you said it was complex?
A Yes, very complex.
Q Tell me what you mean by that.
A Well, tar changes with time. It oxidizes with time such that if you take a specific particular sample and analyze it now, by tomorrow morning that same sample will be something else, will be different.
Q Is it easy or is it difficult to find out what's in cigarette tar?
A Well, tar is very complex. It's not as -- certainly not as straightforward as the analysis of the gas phase. The efforts in the early days were through the use of wet chemistry and, at the time, very rudimentary gas spec equipment. And it was a

difficult task all the way around.
Q Let's see if we can break that down. First you mentioned testing the gas phase, right?
A Correct.
Q What's the methodology used to analyze the gas phase?
A Gas chromatography.
Q When was that technology developed?
A That technology was developed by the American Tobacco Company in the late 50's -- mid to late 50's.
(Change of Reporter at 3:55 o'clock p.m.)

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Q Did American publish that?
A The American Tobacco Company published the procedure, along with the findings of that work.
Q And that technology, I think you said, was available in the 50s; is that right?
A Yes.
Q Now, what's the technology used to analyze what's in the particulate phase, and has that changed over time?
A Well, like I say, in the early days, due to the complexity of the particulate phase we tried to use wet chemistry in the early versions of mass spectroscopy. And they were very crude and difficult. We came back later on in the 80s and attempted to again identify components of the particulate phase using the state-of-the-art mass spec. equipment that was -- had advanced tremendously and was much more sensitive for the work that we were trying to do.
Q Up till today has anyone to your knowledge, even using this sophisticated equipment, been able to identify everything that's in cigarette smoke?
A No.

Q As far as you know?
A No.
Q Let's go back prior to the development of the -- or the advances that you talk about in the mass spectroscope, going back prior to the 1980s. Did American Tobacco have general knowledge about what was in the particulate phase of cigarette smoke?
A Yes.
Q And was there research being conducted in that area?
A Very definitely.
Q Who were the people who were doing the research in that particular area?
A From an American Tobacco standpoint?
Q If you know.
A Well, there was work being done throughout the industry in trying, again, to identify the makeup of particulate phase smoke.
Q And were there people outside the

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industry also doing that research?
A I'm almost certain that the American Health Foundation was doing work at that time.
Q Did the American Tobacco Company keep abreast of that research?

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A Very definitely.
Q How did they do that? Can you tell us some of the ways they did that.
A Well, some of the ways, certainly, was publishing information. Another way was through the tobacco chemistry conference which was held annually at various locations in the country where the tobacco industry scientists would get together and report on various work that was being conducted on identification of components of tobacco and tobacco smoke.
Q How long have these annual meetings been held as far as you're aware?
A I can't recall when the first meeting was held, but in my 38 years there has always been a tobacco chemists' conference.
Q Did the discussions and presentations at those meetings cover analysis of cigarette smoke?
A Yes, among other things.
Q Were there people from outside the industry who attended these meetings?
A Yes. The meeting was open. And the American Health Foundation in particular has made numerous presentations at the tobacco chemists' conference.

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Q And their presentations included presentations or constituents that are present in cigarette smoke?
A Yes.
Q Is that Dietrich Hoffmann Group, the American Health Foundation?
A Wynder Hoffmann, yes.
Q Were the results of the tobacco chemists' meetings, were they published?
A They were published. Each author who presented had the opportunity to publish his own work, but the abstracts of all the papers that were presented at each conference was published and made public.
Q Now, one of the things you told us before was the American Tobacco -- that American Tobacco was not involved directly in conducting medical research, correct?
A Correct.
Q And has the American Tobacco Company contributed to medical research?
A Yes. American Tobacco Company funded research.
Q And I'm talking about -- now about research, medical research, regarding tobacco and

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health.
A Well, funds were made available to the Medical College of Virginia to CTR.
Q What's the reason that companies decided to fund research either at the Medical College of

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Virginia or through the Council for Tobacco Research rather than conducting that research itself?

A Well, we had no toxicologist on staff, no physicians, no doctors, did not have the expertise in that area. And even, you know, if we had participated in it, it's not likely that anybody would have taken it all that serious because it was from the tobacco company. So we felt that our efforts in that area were best utilized by making money available for independent research.

Q So, as I understand what you've told us, you want -- you wanted to make sure you put the money in the hands of the experts who were already out there in that particular field; is that a fair characterization?

A Right.

Q And they would be experts in what field?

A Field of medicine, all areas of medicine. I mean there was no -- we did not direct who got

what funding for what project. There was a pool of money that was made available. And the researchers were free to do what they wanted to as long as it had to do with tobacco.

Q And I think the other thing you said was that you thought the research would be regarded more seriously, I think you said, if it were done --

A There was more -- in my view, I think the company's view, independent study was preferable to company work.

Q Did the company in any way direct that research?

A No.

Q And are the results of research that are funded by the Council for Tobacco Research, is that published?

A Each researcher is encouraged to publish the results of his work. And the CTR publishes an annual summary of the work that has been funded. And it's made available to industry members and the outside world.

Q And as far as you're aware, does the company, American Tobacco Company -- did it ever exercise control over whether research that was

funded by the Council for Tobacco Research got published or not?

A No.

Q Other than contributing to research that was conducted by others -- by other institutions, did American make contributions within its own field and areas of expertise to research into tobacco and tobacco smoke?

A I'm not sure I understand the question.

Q You told us, for example, that American contributed and developed gas chromatograph. That's an example, right?

A Well, we went beyond contributing. That was major state-of-the-art work at the time when the rest of the industry did not have that expertise.

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Q And did American also conduct quality assurance or quality control research?
A Without question that was one of our primary objectives.
Q What was the reason that American Tobacco Company did quality assurance and quality control research?
A We wanted to make sure that our customers -- consumers had the very best product

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available, that the product was uniform, consistent in all parameters, so that if he bought a pack today, bought a pack next week, next month, next year, that we had assurance that he could have assurance that the product was going to be the same as the one he bought before and the one before that.
Q Why did you want to make sure that the company had the assurance that the product was consistent?
A Well, consistency was, you know, an objective of a consumer product. And we felt like we had to give the consumer the best cigarette we could. And the best cigarette included quality control that would give him assurance that the product was consistent.
Q In other words, if the consumer liked the product, you wanted to make sure he stayed with the product?
A Correct.
Q Did there come a time when American Tobacco Company began using reconstituted tobacco in Lucky Strike cigarettes?
A Yes.
Q Can you tell me what happened when

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American Tobacco Company started using the reconstituted tobacco in Lucky Strike cigarettes.
A Well, we started to use it for economic purposes and because of the fact that reconstituted tobacco had a less amount of nicotine in it than normal tobacco. We would blend a cigarette such that with -- using other tobacco, such that we maintained the level of nicotine in the cigarette at the identical level to the product that did not contain RC.
Q So the company's objective in using the reconstituted tobacco was to make a product that was the same as had been made before, or was it --
A No. Our objective was to maintain the consistency which we were insisting on as far as our products. And if it was Lucky Strike, the Lucky Strike made at the time of Point A and the time of Point B, we wanted the consumer to get that same product.
Q Did American Tobacco Company bring a test cigarette to market using this reconstituted tobacco?
A Because of this difference in nicotine, the American Tobacco Company experimented over a period of time with trying to determine the effects

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of adding nicotine to the product to see if we

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could enhance the taste characteristic of it.
Q And did the company bring a product to market that had nicotine added to the reconstituted tobacco? Did they bring it to market?
A Yes.
Q And when did that occur?
A As I recall, it was 1969.
Q Do you recall where that product was test marketed?
A Seattle, Washington.
Q Was that cigarette ever marketed anywhere other than Seattle, Washington?
A To the best of my knowledge, no.
Q How long was it marketed in Seattle?
A Approximately six weeks.
Q And was it considered a test market at the time? Is that what the company considered it?
A Yes.
Q What were the results of the test market? Let me withdraw that. How did consumers react to this cigarette?
A Miserably.
Q Tell me what you mean by "miserably."
A Those that tried it did not go back for

another pack, and the sales were so limited and miserable that the product was withdrawn.
Q Now, when the company brought this test cigarette to market in Seattle, did that test cigarette actually deliver more nicotine than the Lucky Strike cigarettes that were being sold everywhere else in the country?
A No.
Q Do you recall how much? Let me show you the document here. Woody, this is from your Exhibit Number 11.
Okay.
A Yeah.
Q Mr. Riley -- excuse me.
And we're reading from Page 3 of the question here. Can you read into the record here how much nicotine was added right here?
A Yeah. Nicotine added to tobacco of the 1969 -- wait a minute. I'm sorry. Nicotine added to tobacco of the test market cigarette was .0115 percent by weight, and as such was negligible in comparison to the 1.7 percent by weight of nicotine naturally occurring in the tobacco blend.
Q Now, other than that six-week period of time in Seattle, Washington, back in 1969, was

there ever any other occasion where the American Tobacco Company marketed a commercial cigarette that had tobacco fortified with nicotine other than what was naturally occurring in the tobacco?
A No. There was a lot of research work in that area, but with the one exception of the 1969 test marketed cigarette, no other product was commercially introduced.
Q Now, Mr. Sprinkle, you've told us a little bit about the research that American was funding over the years. Has there been -- have other entities been conducting research into

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smoking and health over the same time period, entities other than the American Tobacco Company or other than entities that American funded?
A Yes.
Q Has that been true, as far as you're aware, throughout the time you worked for American Tobacco Company?
A Yes.
Q From 1957 right through January of 1995?
A Yes.
Q And, in fact, you know that that research is still continuing today?
A To the best of my knowledge.

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Q What would the American Tobacco Company have done if the research that it supported, or that anybody else supported, had identified a constituent in tobacco smoke that had been identified as a cause of human disease? What would American Tobacco Company have done?
A If that had been a fact, which I hope it becomes one day -- and I'm only sorry that I'm not with the American Tobacco Company any longer -- but it would be a tremendous project and a great challenge, and one that we would have relished undertaking to try and confirm that that was in tobacco and take steps to eliminate it from tobacco and tobacco smoke.
Q And was there ever an occasion during the time that you worked for the American Tobacco Company that the research or that the Surgeon General suggested that a product modification or design be made in cigarettes for health reasons?
Was there ever an occasion like that?
A Yes.
Q When was that?
A Oh, that must have been '67, maybe. I'm not sure of the date.
Q What was the change that was suggested?

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A Well, as I recall, the Surgeon General said that in his view at that time the best filter of a cigarette would be one that contained water and charcoal.
Q What was American Tobacco's response to that statement by the Surgeon General?
A Well, it was again a suggestion that something could be done to better a cigarette. And the American Tobacco Company dug in with full force to develop a cigarette that would contain water. We developed a process to encapsulate that water. We knew how to get carbon in it, charcoal, because we already had Tereyton on the market -- and as rapidly as we could, introduced the cigarette.
Q Did you actually bring that cigarette to market?
A Yes.
Q What was the name of that cigarette?
A Waterford.
Q And how did Waterford do in the marketplace?
A It did not do well. The consumers tried it. We had, as I recall, a great trial initially,

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but we could not get the repeat buyers. They, for whatever reason, didn't like the cigarette. And

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with time, because of low sales, the product was withdrawn from the market.

Q Subsequent to that time has the Surgeon General ever said that there's anything that can be done with respect to cigarette design or modification with respect to the health effects of smoking?

A Well, I think it's his opinion -- has been that there is no -- nobody should make it -- no one should smoke a cigarette of any type, any kind.

Q Are you aware of any time since the Surgeon General suggested that cigarettes perhaps should be made using water filters -- are you aware of any time since then that the Surgeon General has specified a design for cigarettes that should be used for health reasons?

A No.

Q Now, I understand, Mr. Sprinkle, that you're not an epidemiologist, correct?

A Correct.

Q And you've got no formal training in medicine?

A Correct.

Q What is your field of expertise?

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A My field is chemistry.

Q Tobacco chemistry?

A For the last 38 years has been tobacco chemistry.

Q If someone at senior management at the American Tobacco Company had a question regarding cigarette smoke, cigarette smoke constituents, who would they ask; who would they call for information about that?

A They would call the research laboratory and call my number.

Q They'd call you?

A Yes.

Q And if senior management had questions from reading the Surgeon General's reports or from reading medical literature, other medical literature, other cigarette smoke or -- about cigarette smoke or cigarette smoke constituents, who would they call?

A Me.

Q You're not -- okay. Mr. Wilner asked you some questions about whether there is -- he referred to carcinogens being present in cigarette smoke. Do you know whether he was referring to carcinogens in animals or carcinogens in human

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beings?

A I don't know.

Q Has the Surgeon General ever said that there is a way to eliminate any of those substances from cigarette smoke?

A No.

Q Such as that, you'd have a safe cigarette -- let me withdraw that. Has the Surgeon

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General ever said that there is a way that those substances should be removed from cigarettes for health reasons?
A No.
Q Has the Surgeon General ever said that if you remove those substances, you'd have a cigarette that, according to the Surgeon General, would have no health effects --
A No.
Q Let me finish the question so we'll have a complete question/answer.
Did the American Tobacco Company ever submit to the federal government, disclose to the federal government, the ingredients that were used in the making of cigarettes?
A What we referred to as the additives, the flavoring materials, yes.

Q How long has the company -- how often is that done?
A Once a year.
Q And how long has that been going on?
A To the best of my knowledge, since 1985.
Q Has the Surgeon General or anybody from the federal government ever come to the American Tobacco Company and said you shouldn't be using any of those ingredients?
A None whatsoever. They've been very quiet on the subject. They've not asked us for anything other than the annual report.
Q Have they ever told you that you should eliminate any of those ingredients?
A No.
(Reporter's note: Conclusion of reading transcript)
MS. HARTLEY: That concludes the examination. Thank you.
THE COURT: All right. Any further of this witness?
MS. HARTLEY: No. However, he will also act as Mr. Lougee. And that is a very, very short, maybe five-minute deposition.
THE COURT: All right. Call your next

witness.
MS. HARTLEY: Plaintiff calls Bryan Lougee, III. He was the president and CEO of the American Tobacco Company. The deposition was taken in an unrelated case September 12th, 1984. And I promise you it's short.
THE COURT: And again, we're going to use the same procedure, ladies and gentlemen.
(Reporter's note: The following testimony was read into the record with Ms. Hartley reading the questions and Mr. Cronin responding with answers.)
BY MS. HARTLEY:
Q Mr. Lougee, for the record please, will you state your current address.
A 11 Winding Lane, Darien, Connecticut.
THE COURT: Excuse me just a minute. Let me explain to you, we're skipping that part, but all of the witnesses at a deposition are sworn in

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first, just as I will the live witnesses who come here.

Go ahead, Ms. Hartley.

BY MS. HARTLEY:

Q By whom are you employed?

A American brands.

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Q Do you have any employment relationship with American Tobacco?

A Yes.

Q What's the nature of your employment with American brands?

A I am president and chief executive officer of American Tobacco.

Q You started with American Tobacco in 1951; is that correct?

A Yes.

Q When did you become chief executive officer of American Tobacco?

A January 1st, 1981.

Q Do you agree with the statement that cigarettes may be injurious to your health?

A No.

Q Do you agree with the statement that cigarette smoking is dangerous to your health?

A No.

Q Do you agree with the statement that a smoker who stops smoking may improve his health?

A No.

Q Do you agree with the statement that cigarette smoking can cause problems with pregnancy such as --

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A I don't believe any of those statements have been proven.

Q All right. So that you also don't believe that cigarette smoking can cause cancer or heart disease or lung disease?

A I don't believe it. It's -- I don't believe it's been proven that it has.

Q Well, I didn't ask you if it's been proven. I asked you if you believed it.

A I don't believe it.

Q Now, I've asked you what you believe. Are your beliefs, as we have just discussed them on the subject of cigarette smoking and its various potential health effects, the same as the beliefs of American Tobacco?

A On those last subjects there, that is true.

(Reporter's note: Conclusion of reading transcript)

MS. HARTLEY: That's all we have, Your Honor. The defense may have some counter designations.

MR. BROWNING: I do, Your Honor. And because of the length of the deposition, I need to pull a few of them. I'm missing one page so may I

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have just a moment, please?

THE COURT: Sure.

MR. BROWNING: Your Honor, it's going to take us a little bit longer than we anticipated,

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because we thought they were going to read them. I have to get the material out for Mr. Nyhan to read so --

THE COURT: Can we approach the side bar just a minute.

(Side bar, Court and counsel)

THE COURT: Ladies and gentlemen, I'm going to ask you to step back in the jury room for about five minutes or so. I think we're finished with this part of the deposition, so we're still running ahead of time. So please, if you will, just step back in the jury room.

Please do not discuss the case among yourselves. We'll bring you back out in a few minutes and finish the deposition. All right. We'll be in recess for about five minutes.

(Jury exits courtroom)

MR. NYHAN: Judge, we only have one copy that's highlighted. So we thought we'd do it standing up.

THE COURT: That's fine.

MR. NYHAN: And he'll read the questions; I'll read the answers.

THE COURT: All right. That would be fine. Wait just a minute. Are you ready to proceed?

MR. WILNER: Sorry, Your Honor. We were talking. I didn't mean --

THE COURT: Are you ready to proceed?

MS. HARTLEY: Yes.

THE COURT: Mr. Browning?

MR. BROWNING: Yes, Your Honor.

THE COURT: Do you want to wait a minute, Mr. Matthews?

MR. WILNER: I think they were going to go back today. That's okay.

MS. HARTLEY: We're ready, Your Honor.

MR. WILNER: We're ready.

MR. BROWNING: Do you want me to stay here?

THE COURT: Yes.

MR. BROWNING: All right.

THE COURT: All right. Bring them in, please.

(Jury enters courtroom)

THE COURT: Ladies and gentlemen, this is

the same deposition. It's another portion of that deposition, but because we only had one copy, Mr. Browning is going to read the questions, and Mr. Nyhan is going to read the answers over his shoulder, but this is the same witness that you just heard testimony presented by Ms. Hartley.

MR. NYHAN: And we didn't want to hold you up any longer. That's why we're trying to expedite it.

THE COURT: All right.

MR. NYHAN: And this deposition was taken on September 12, 1984.

THE COURT: Okay, but -- and it's -- as I said, it's the same gentleman who was testifying previously through Mr. Cronin. Okay.

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(Reporter's note: The following testimony was read into the record with Mr. Browning reading the questions and Mr. Nyhan responding with answers.)

BY MR. BROWNING:

Q Would you be comfortable in stating that analysis of tobacco smoke was ongoing at approximately 1940?

A Yes.

Q In the time period around 1940, what

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would have been the purpose of attempting to analyze the constituent parts of tobacco smoke?

A To know everything from a chemical and tobacco standpoint about our products.

Q And to what purpose would it have served to know the chemical aspects of constituent parts of tobacco smoke?

A We were charged to know everything about our product from the beginning. And what you find out about -- about it, either confirms what you did know or may find something maybe that you didn't know about it or you can improve. You can keep the specifications even closer around each range of the parameter. You're shooting for thorough knowledge. We wanted to know everything that we could know about our product.

Q For how long has the company attempted to measure levels of nicotine in cigarette smoke?

A I wouldn't know the date they started, but it was immediately upon their developing methodology and equipment for doing that in smoke as well as in leaf. I think our company would have been the leader in developing chemical analysis for nicotine in tobacco as well as in smoke.

Q Do you know if there is any federal

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requirement with regard to retention of those records?

A There is a requirement that the FTC asked us -- that's Federal Trade Commission -- asked us to give them all of our records on smoking dry particulate matter and nicotine and subsequently carbon monoxide. And we give them copies of our tests when they ask for it for the period in which they ask for it.

Q Other than the comments by your, I guess, supervisory figures while you were in high school, when can you recall the first time that you became aware of the controversy with regard to smoking and disease?

A I can't recall a specific time. I don't know that I recall while I was in United States Navy that it was a common subject, but we were out of contact with the general information that comes to the citizen. Certainly I've been aware of the fact that -- claims against smoking everywhere I've lived throughout my life.

Q Well, I'm asking you, as of May of 1981, did the company have a policy that restricted the use of models to people who appeared to be older than the age of 21?

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A We didn't use models unless they were older than 21.
Q All right. Was that a company policy?
A Yes.
Q Did the Council for Tobacco Research or its members or responsible parties have the right during the period, '77 to '81, to veto any particular research project recommended by the Scientific Advisory Board?
A No.
Q Would you agree with that statement, that there are serious associations between smoking and health?
A Yes.
(Reporter's note: Conclusion of reading transcript)
MR. BROWNING: And that concludes our publication, Your Honor.
THE COURT: All right. Thank you.
MS. HARTLEY: Your Honor, we don't have anything further for this afternoon.
THE COURT: Approach the side bar a minute.
(Side bar, Court and counsel)
THE COURT: Ladies and gentlemen, as far

as the jury is concerned, we're going to recess for the evening. So please do not discuss the case among yourselves or with anyone else. And if you're back in the jury room at nine o'clock tomorrow morning, we will be able to start at nine o'clock.
And I hope to have the answers for the jurors tomorrow. Okay. So the jury is excused until nine o'clock tomorrow morning. We're going to stay.
Please, again, do not watch anything on TV concerning this case or listen to anything on the radio or read anything in the newspaper. There apparently is going to be publicity about the case. So we need for you to decide this case based on the evidence you hear in the courtroom and only that evidence and your common sense and the law. Okay.
With that, you're excused till nine o'clock tomorrow morning.
Yes, sir?
JUROR: Do we leave these in the jury room?
THE COURT: You can leave them in your jury room or you can leave them on your seats. We're going to secure the courtroom, so that no one

will be coming in and out. No one will look at what you've written. And none of the lawyers are going to go over and look at it. I'll assure you of that, Mr. Bowman. Okay.
Thank you. You're excused till nine o'clock tomorrow morning. We're going to use the courtroom.
THE BAILIFF: The court will be in recess until tomorrow morning at nine o'clock.
(Change of reporter, 4:30 p.m.)

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THE COURT: All right, Mr. Wilner. Any time you're ready.

MR. WILNER: Yes, Your Honor. We have -- we would like to offer some exhibits, and we're kind of in the process of doing a little final negotiation on them, so I think maybe we'll be able to do it without too much argument. What we're --

THE COURT: If you need some time, I'll give it to you.

MR. WILNER: I think we're about ready. What we're going to do, Your Honor, with the Court's permission, we have a volume -- the exhibits are bound in volumes and they're each numbered. And what we have in the front of the exhibit is kind of a digest that lists what it is, and also has some quotes in it.

I'm not offering that digest into evidence. But for the Court's convenience, I'm leaving the digest in while we debate the documents, if we do so. Then we can take it out before it goes to the jury. But I just say that because I wasn't offering the digest.

I will offer, though, an index which I guess we haven't made yet which I -- as an oversight, which at least lists the titles of the

exhibits and gives the numbers so the jury will know what's in the book.

MR. JARMEL: Judge, we're just concerned that the digests -- I mean, obviously, there are their privileged documents in the digest. They're documents that --

MR. WILNER: Not going to offer the digest, just for the Court.

MR. JARMEL: Just to make sure.

THE COURT: You're not offering that into evidence?

MR. WILNER: No, in fact --

MR. LANGLEY: Do you want to ID it, sir?

(Plaintiff's Exhibit No. 1 was marked for identification.)

MR. WILNER: As an oversight, I did not prepare an index that does not have the quotes, but I'll do that for tomorrow morning, if we can stick that in.

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There are also markings on that digest that say we have withdrawn from this particular proffer some of those documents. We're not going to argue them now. We're not withdrawing -- we're going to argue them after we set up a predicate and so forth.

But plaintiff offers the set of documents referred to by volume name of ATCCAN.

MR. JARMEL: Judge, if I could introduce Greg Loss, an associate with our firm. He'll be making the objections. These are nonprivileged objections. We understand that all the privileged documents, the 13 that were in the binders, will be removed. Greg will be addressing the additional objections.

MR. LOSS: Good afternoon, Your Honor. We have no objection to ATCCAN-1.

THE COURT: All right. That is with the caveat that the law --

MR. LOSS: Absolutely, Your Honor. We think that the lawyer's log should be removed from the front because they're hearsay.

MR. WILNER: No, we're not offering --

THE COURT: What I'll do, Mr. Wilner, is just remove the log and keep it up here with me and introduce, then, the book itself into evidence.

MR. WILNER: Might I ask if we prepare an index with no quotes --.

MR. LOSS: It's fine for the judge.

THE COURT: Is this Plaintiff's Exhibit 1 or Exhibit 1 through whatever?

MR. WILNER: Well, I think the easiest thing is just to mark it as 1, composite. It has subexhibits in it.

THE COURT: It is Plaintiff's Exhibit 1, and we'll refer to them as composite exhibits.

(Plaintiff's Exhibit No. 1 was received into evidence.)

MR. WILNER: Then the next one we'll offer, Your Honor, is ATCNIC. Did you all have a chance -- I'm sure you did.

MR. LOSS: Again, provided the privileged documents are removed, we have no objection to ATCNIC.

MR. WILNER: Let's verify we're all on the same page.

THE COURT: All right. This first log --

MS. HARTLEY: There were none in ATCNIC, as I understand it, from our review this morning.

MR. JARMEL: I'm having trouble following all this. I'm just making sure we understand that all these documents that were highlighted -- if all those highlighted documents are not in any of your books, then we're doing what we need to do.

MS. HARTLEY: There are no privileged

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MR. WILNER: If we make a mistake, we'll pull it out before it goes to the jury, but I don't think there are. Is that the Court's copy?
MS. HARTLEY: No, that's our copy.
THE COURT: Did you have one you can put in evidence?
MR. WILNER: We do.
THE COURT: All right.
MR. WILNER: Again, this has a digest in the front that we'll replace with a straight --
THE COURT: Mr. Langley, if you'll hand me the exhibit, I'll take the digest out and keep it up here.
(Plaintiff's Exhibit No. 2 was marked for identification.)
THE COURT: Okay. This will be No. 2 without objection.
(Plaintiff's Exhibit No. 2 was received into evidence.)
THE COURT: All right. Mr. Wilner?
MR. WILNER: The volume called public statements with the -- sorry. It's kind of heavy.
(Plaintiff's Exhibit No. 3 was marked for identification.)

review these documents?
MR. LOSS: I have not had a chance to review those.
MR. WILNER: I'm sorry, the public statements?
MR. LOSS: I have not.
MR. MATTHEWS: Somebody at your office has.
MR. JARMEL: No objection.
THE COURT: Did I hear you say "no objection"?
MR. JARMEL: Yes, sir.
MR. LOSS: Yes, sir.
THE COURT: Okay. And they'll be entered at Plaintiff's Composite Exhibit 3.
MR. LANGLEY: Correct, Your Honor.
(Plaintiff's Exhibit No. 3 was received into evidence.)
MR. WILNER: It's actually faster than it seems.
THE COURT: Is that it?
MR. WILNER: We have one or two more books, but, you know, I think that's pretty good, I think, for one day. We have talked about it.

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no objections.
MR. WILNER: It's the way you get to the U.S. Supreme Court, you know.
MS. HARTLEY: We're ready. No objections, I believe, to ATC Public. This is our copy I believe.
THE COURT: You're not making any objections to it, Ms. Hartley?
MR. NYHAN: Not yet, Your Honor.
MS. HARTLEY: Here's the Court's copy.
MR. WILNER: That doesn't have a digest at all. We'll have to run the index.
(Plaintiff's Exhibit No. 4 was marked for identification.)
THE COURT: All right. Have you seen this book?
MR. JARMEL: Yes, Your Honor.
THE COURT: Any objection?
MR. JARMEL: No, Your Honor.
THE COURT: There is no -- there's no digest.
MR. WILNER: That one doesn't happen to have it.
THE COURT: It does, but I'll take it out.
(Plaintiff's Exhibit No. 4 was received

into evidence.)
MR. NYHAN: This is ATC Public and not everybody's public, just American Tobacco Public.
MR. JARMEL: I think we only had one public statement book.
MR. WILNER: There are three.
MR. NYHAN: There are Brown & Williamson statements, American statements and everybody's statements.
MR. JARMEL: Actually, we have five total binders, one of which is public statement.
MR. LOSS: We only have one public statement binder.
MR. WILNER: We're not trying --
MS. HARTLEY: If you need a chance to look at them --
MR. WILNER: If you need a chance to look at it, we can do it tomorrow, that's no problem.
MR. NYHAN: Have you given us copies of the binders?
MS. HARTLEY: Yes.
MR. WILNER: Everything twice.
MR. NYHAN: But have you given us copies of the binders you're furnishing the Court?
MR. WILNER: Yes, sure, everything.

MS. HARTLEY: I believe so.
MR. WILNER: But if you want to look at it again, it's okay. I mean, if you want to do it tomorrow, we can do it, too.
MR. NYHAN: 4 is ATC -- what is 3? How is

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3 identified?
MR. LANGLEY: Public statements.
MR. WILNER: Public statements -- everybody, TI, TIRC, that kind of stuff.
MR. LOSS: Okay.
MR. WILNER: At least, that's what we tried. If you find anything wrong, let me know.
MR. LOSS: No problem.
THE COURT: All right.
MS. HARTLEY: We're done, I think.
MR. WILNER: I'm trying to stay ahead of things. Oh, we -- that would conclude our document proffer today. We'll have some more tomorrow. I think we can probably put in the rest of them tomorrow or the next day.
But that's as far as we've gotten in negotiating and so forth. We do have a short item to take up with Your Honor on some interrogatory answers, just three answers that we need a brief ruling on, if we might.

MR. JARMEL: Judge, we didn't know this was coming up.
MR. WILNER: I know. If there's anything about it --
MR. JARMEL: Can we take it up in the morning?
THE COURT: I have no problem doing it in the morning.
MR. WILNER: Let me just say what it is, because you may agree. If not then -- let me get those interrogatories. We'll probably need to leave copies -- unfortunately with interrogatories, we don't have enough copies, and it's hard to make this argument. But I will -- we can always argue it tomorrow.
MR. JARMEL: Can I suggest, Judge, that Woody and I talk informally and try to resolve it? And if there's a problem, we can come back in the morning. I don't see why we need to take the Court's time with this.
MR. WILNER: Okay. That's fine.
THE COURT: All right. I'll be here before then, but I'll be available from 8:30 to 9:00, if you need me. Also -- in chambers.
But I want to start with the jury right at

9:00. I don't want to waste any time of theirs.
MR. WILNER: It might be better to take it up tomorrow afternoon rather --
THE COURT: Whenever. I just don't want to take it up while the jury's sitting back there.
MR. WILNER: I agree. Nor do we.
THE COURT: I will be available. If you can agree, that's fine. If you have to object, that's fine, also. But I'd like to do it between 8:30 and 9:00 or some other time. Is that it?

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MR. WILNER: That's it.
THE COURT: We'll be in recess until 9:00 tomorrow morning unless be meet in chambers between 8:30 and 9:00.
(The proceedings adjourned at 5:45 p.m., to be reconvened at 9:00 a.m., Thursday, May 14, 1998)

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